



# ACT, RULES, AND POLICIES MANUAL

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## **Campaign Contributions and Expenses, A.R.S., Title 16, Chapter 6, Article 1**

### **§16-901 Definitions**

In this chapter, unless the context otherwise requires:

1. “Agent” means, with respect to any person other than a candidate, any person who has oral or written authority, either express or implied, to make or authorize the making of expenditures as defined in this section on behalf of a candidate, any person who has been authorized by the treasurer of a political committee to make or authorize the making of expenditures or a political consultant for a candidate or political committee.
2. “Candidate” means an individual who receives or gives consent for receipt of a contribution for his nomination for or election to any office in this state other than a federal office.
3. “Candidate’s campaign committee” means a political committee designated and authorized by a candidate.
4. “Clearly identified candidate” means that the name, a photograph or a drawing of the candidate appears or the identity of the candidate is otherwise apparent by unambiguous reference.
5. “Contribution” means any gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing an election including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer and:
  - (a) Includes all of the following:
    - (i) A contribution made to retire campaign debt.
    - (ii) Money or the fair market value of anything directly or indirectly given or loaned to an elected official for the purpose of defraying the expense of communications with constituents, regardless of whether the elected official has declared his candidacy.
    - (iii) The entire amount paid to a political committee to attend a fund raising or other political event and the entire amount paid to a political committee as the purchase price for a fund-raising meal or item, except that no contribution results if the actual cost of the meal or fund-raising item, based on the amount charged to the committee by the vendor, constitutes the entire amount paid by the purchaser for the meal or item, the meal or item is for the purchaser’s personal use and not for resale and the actual cost is the entire amount paid by the purchaser in connection with the event. This exception does not apply to auction items.
    - (iv) Unless specifically exempted, the provision of goods or services without charge or at a charge that is less than the usual and normal charge for such goods and services.
  - (b) Does not include any of the following:
    - (i) The value of services provided without compensation by any individual who volunteers on behalf of a candidate, a candidate’s campaign committee or any other political committee.
    - (ii) Money or the value of anything directly or indirectly provided to defray the expense of an elected official meeting with constituents if the elected official is engaged in the performance of the duties of his office or provided by the state or a political subdivision to an elected official for communication with constituents if the elected official is engaged in the performance of the duties of his office.
    - (iii) The use of real or personal property, including a church or community room used on a regular basis by members of a community for noncommercial purposes, that is obtained by an individual in the course of volunteering personal services to any candidate, candidate’s committee or political party, and the cost of invitations, food and beverages voluntarily provided by an individual to any candidate, candidate’s campaign committee or political party in rendering voluntary personal

services on the individual's residential premises or in the church or community room for candidate-related or political party-related activities, to the extent that the cumulative value of the invitations, food and beverages provided by the individual on behalf of any single candidate does not exceed one hundred dollars with respect to any single election.

- (iv) Any unreimbursed payment for personal travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate.
- (v) The payment by a political party for party operating expenses, party staff and personnel, party newsletters and reports, voter registration and efforts to increase voter turnout, party organization building and maintenance and printing and postage expenses for slate cards, sample ballots, other written materials that substantially promote three or more nominees of the party for public office and other election activities not related to a specific candidate, except that this item does not apply to costs incurred with respect to a display of the listing of candidates made on telecommunications systems or in newspapers, magazines or similar types of general circulation advertising.
- (vi) Independent expenditures.
- (vii) Monies loaned by a state bank, a federally chartered depository institution or a depository institution the deposits or accounts of which are insured by the federal deposit insurance corporation or the national credit union administration, other than an overdraft made with respect to a checking or savings account, that is made in accordance with applicable law and in the ordinary course of business. In order for this exemption to apply, this loan shall be deemed a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors, the loan shall be made on a basis that assures repayment, evidenced by a written instrument, shall be subject to a due date or amortization schedule and shall bear the usual and customary interest rate of the lending institution.
- (viii) A gift, subscription, loan, advance or deposit of money or anything of value to a national or a state committee of a political party specifically designated to defray any cost for the construction or purchase of an office facility not acquired for the purpose of influencing the election of a candidate in any particular election.
- (ix) Legal or accounting services rendered to or on behalf of a political committee or a candidate, if the only person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of compliance with this title.
- (x) The payment by a political party of the costs of campaign materials, including pins, bumper stickers, handbills, brochures, posters, party tabloids and yard signs, used by the party in connection with volunteer activities on behalf of any nominee of the party or the payment by a state or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by the committee if the payments are not for the costs of campaign materials or activities used in connection with any telecommunication, newspaper, magazine, billboard, direct mail or similar type of general public communication or political advertising.
- (xi) Transfers between political committees to distribute monies raised through a joint fund-raising effort in the same proportion to each committee's share of the fund-raising expenses and payments from one political committee to another in reimbursement of a committee's proportionate share of its expenses in connection with a joint fund-raising effort.
- (xii) An extension of credit for goods and services made in the ordinary course of the creditor's business if the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation and if the creditor makes a commercially reasonable attempt to collect the debt, except that any

extension of credit under this item made for the purpose of influencing an election which remains unsatisfied by the candidate after six months, notwithstanding good faith collection efforts by the creditor, shall be deemed receipt of a contribution by the candidate but not a contribution by the creditor.

- (xiii) Interest or dividends earned by a political committee on any bank accounts, deposits or other investments of the political committee.
- 6. “Earmarked” means a designation, instruction or encumbrance that results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate’s campaign committee.
- 7. “Election” means any election for any initiative, referendum or other measure or proposition or a primary, general, recall, special or runoff election for any office in this state other than the office of precinct committeeman and other than a federal office. For purposes of sections 16-903 and 16-905, the general election includes the primary election.
- 8. “Expenditures” includes any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made by a person for the purpose of influencing an election in this state including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer and a contract, promise or agreement to make an expenditure resulting in an extension of credit and the value of any in-kind contribution received. Expenditure does not include any of the following:
  - (a) A news story, commentary or editorial distributed through the facilities of any telecommunications system, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by a political committee, political party or candidate.
  - (b) Nonpartisan activity designed to encourage individuals to vote or to register to vote.
  - (c) The payment by a political party of the costs of preparation, display, mailing or other distribution incurred by the party with respect to any printed slate card, sample ballot or other printed listing of three or more candidates for any public office for which an election is held, except that this subdivision does not apply to costs incurred by the party with respect to a display of any listing of candidates made on any telecommunications system or in newspapers, magazines or similar types of general public political advertising.
  - (d) The payment by a political party of the costs of campaign materials, including pins, bumper stickers, handbills, brochures, posters, party tabloids and yard signs, used by the party in connection with volunteer activities on behalf of any nominee of the party or the payment by a state or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by the committee if the payments are not for the costs of campaign materials or activities used in connection with any telecommunications system, newspaper, magazine, billboard, direct mail or similar type of general public communication or political advertising.
  - (e) Any deposit or other payment filed with the Secretary of State or any other similar officer to pay any portion of the cost of printing an argument in a publicity pamphlet advocating or opposing a ballot measure.
- 9. “Exploratory committee” means a political committee that is formed for the purpose of determining whether an individual will become a candidate and that receives contributions or makes expenditures of more than five hundred dollars in connection with that purpose.
- 10. “Family contribution” means any contribution that is provided to a candidate’s campaign committee by a parent, grandparent, spouse, child or sibling of the candidate or a parent or spouse of any of those persons.
- 11. “Filing officer” means the office that is designated by section 16-916 to conduct the duties prescribed by this chapter.
- 12. “Identification” means:
  - (a) For an individual, his name and mailing address, his occupation and the name of his employer.

- (b) For any other person, including a political committee, the full name and mailing address of the person. For a political committee, identification includes the identification number issued on the filing of a statement of organization pursuant to section 16-902.01.
13. "Incomplete contribution" means any contribution received by a political committee for which the contributor's mailing address, occupation, employer or identification number has not been obtained and is not in the possession of the political committee.
14. "Independent expenditure" means an expenditure by a person or political committee, other than a candidate's campaign committee, that expressly advocates the election or defeat of a clearly identified candidate, that is made without cooperation or consultation with any candidate or committee or agent of the candidate and that is not made in concert with or at the request or suggestion of a candidate, or any committee or agent of the candidate. Independent expenditure includes an expenditure that is subject to the requirements of section 16-917 which requires a copy of campaign literature or advertisement to be sent to a candidate named or otherwise referred to in the literature or advertisement. An expenditure is not an independent expenditure if any of the following applies:
- (a) Any officer, member, employee or agent of the political committee making the expenditure is also an officer, member, employee or agent of the committee of the candidate whose election or whose opponent's defeat is being advocated by the expenditure or an agent of the candidate whose election or whose opponent's defeat is being advocated by the expenditure.
  - (b) There is any arrangement, coordination or direction with respect to the expenditure between the candidate or the candidate's agent and the person making the expenditure, including any officer, director, employee or agent of that person.
  - (c) In the same election the person making the expenditure, including any officer, director, employee or agent of that person, is or has been:
    - (i) Authorized to raise or expend monies on behalf of the candidate or the candidate's authorized committees.
    - (ii) Receiving any form of compensation or reimbursement from the candidate, the candidate's committees or the candidate's agent.
  - (d) The expenditure is based on information about the candidate's plans, projects or needs, or those of his campaign committee, provided to the expending person by the candidate or by the candidate's agents or any officer, member or employee of the candidate's campaign committee with a view toward having the expenditure made.
15. "In-kind contribution" means a contribution of goods or services or anything of value and not a monetary contribution.
16. "Itemized" means that each contribution received or expenditure made is set forth separately.
17. "Literature or advertisement" means information or materials that are mailed, distributed or placed in some medium of communication for the purpose of influencing the outcome of an election.
18. "Personal monies" means any of the following:
- (a) Assets to which the candidate has a legal right of access or control at the time he becomes a candidate and with respect to which the candidate has either legal title or an equitable interest.
  - (b) Salary and other earned income from bona fide employment of the candidate, dividends and proceeds from the sale of the stocks or investments of the candidate, bequests to the candidate, income to the candidate from trusts established before candidacy, income to the candidate from trusts established by bequest after candidacy of which the candidate is a beneficiary, gifts to the candidate of a personal nature that have been customarily received before the candidacy and proceeds received by the candidate from lotteries and other legal games of chance.
  - (c) The proceeds of loans obtained by the candidate that are not contributions and for which the collateral or security is covered by subdivision (a) or (b) of this paragraph.
  - (d) Family contributions.



19. "Political committee" means a candidate or any association or combination of persons that is organized, conducted or combined for the purpose of influencing the result of any election or to determine whether an individual will become a candidate for election in this state or in any county, city, town, district or precinct in this state, that engages in political activity in behalf of or against a candidate for election or retention or in support of or opposition to an initiative, referendum or recall or any other measure or proposition and that applies for a serial number and circulates petitions and, in the case of a candidate for public office except those exempt pursuant to section 16-903, that receives contributions or makes expenditures in connection therewith, notwithstanding that the association or combination of persons may be part of a larger association, combination of persons or sponsoring organization not primarily organized, conducted or combined for the purpose of influencing the result of any election in this state or in any county, city, town or precinct in this state. Political committee includes the following types of committees:
- (a) A candidate's campaign committee.
  - (b) A separate, segregated fund established by a corporation or labor organization pursuant to section 16-920, subsection A, paragraph 3.
  - (c) A committee acting in support of or opposition to the qualification, passage or defeat of a ballot measure, question or proposition.
  - (d) A committee organized to circulate or oppose a recall petition or to influence the result of a recall election.
  - (e) A political party.
  - (f) A committee organized for the purpose of making independent expenditures.
  - (g) A committee organized in support of or opposition to one or more candidates.
  - (h) A political organization.
  - (i) An exploratory committee.
20. "Political organization" means an organization that is formally affiliated with and recognized by a political party including a district committee organized pursuant to section 16-823.
21. "Political party" means the state committee as prescribed by section 16-825 or the county committee as prescribed by section 16-821 of an organization that meets the requirements for recognition as a political party pursuant to section 16-801 or section 16-804, subsection A.
22. "Sponsoring organization" means any organization that establishes, administers or contributes financial support to the administration of, or that has common or overlapping membership or officers with, a political committee other than a candidate's campaign committee.
23. "Standing political committee" means a political committee that is all of the following:
- (a) Active in more than one reporting jurisdiction in this state for more than one year.
  - (b) Files a statement of organization as prescribed by section 16-902.01, subsection E.
  - (c) Is any of the following as defined by paragraph 19 of this section:
    - (i) A separate, segregated fund.
    - (ii) A political party.
    - (iii) A committee organized for the purpose of making independent expenditures.
    - (iv) A political organization.
24. "Statewide office" means the office of governor, Secretary of State, state treasurer, attorney general, superintendent of public instruction, corporation commissioner or mine inspector.
25. "Surplus monies" means those monies of a political committee remaining after all of the committee's expenditures have been made and its debts have been extinguished.

### **§16-901.01 Limitations on certain unreported expenditures and contributions**

- A. For purposes of this chapter, “expressly advocates” means:
1. Conveying a communication containing a phrase such as “vote for,” “elect,” “re-elect,” “support,” “endorse,” “cast your ballot for,” “(name of candidate) in (year),” “(name of candidate) for (office),” “vote against,” “defeat,” “reject,” or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates, or
  2. Making a general public communication, such as in a broadcast medium, newspaper, magazine, billboard, or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s):
    - (a) That in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements of the candidate(s) or opponents, or
    - (b) In the sixteen-week period immediately preceding a general election.
- B. A communication within the scope of subsection A, paragraph 2 shall not be considered as one that “expressly advocates” merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party, or a person who is coordinating with a candidate or candidate’s agent.

## **Citizens Clean Elections Act, A.R.S., Title 16, Chapter 6, Article 2**

### **§ 16-940 Findings and declarations**

- A. The people of Arizona declare our intent to create a clean elections system that will improve the integrity of Arizona state government by diminishing the influence of special-interest money, will encourage citizen participation in the political process, and will promote freedom of speech under the U.S. and Arizona Constitutions. Campaigns will become more issue-oriented and less negative because there will be no need to challenge the sources of campaign money.
- B. The people of Arizona find that our current election-financing system:
  - 1. Allows Arizona elected officials to accept large campaign contributions from private interests over which they have governmental jurisdiction;
  - 2. Gives incumbents an unhealthy advantage over challengers;
  - 3. Hinders communication to voters by many qualified candidates;
  - 4. Effectively suppresses the voices and influence of the vast majority of Arizona citizens in favor of a small number of wealthy special interests;
  - 5. Undermines public confidence in the integrity of public officials;
  - 6. Costs average taxpayers millions of dollars in the form of subsidies and special privileges for campaign contributors;
  - 7. Drives up the cost of running for state office, discouraging otherwise qualified candidates who lack personal wealth or access to special-interest funding; and
  - 8. Requires that elected officials spend too much of their time raising funds rather than representing the public.

### **§ 16-941 Limits on spending and contributions for political campaigns**

- A. Notwithstanding any law to the contrary, a participating candidate:
  - 1. Shall not accept any contributions, other than a limited number of five-dollar qualifying contributions as specified in section 16-946 and early contributions as specified in section 16-945, except in the emergency situation specified in section 16-954, subsection F.
  - 2. Shall not make expenditures of more than a total of five hundred dollars of the candidate's personal monies for a candidate for legislature or more than one thousand dollars for a candidate for statewide office.
  - 3. Shall not make expenditures in the primary election period in excess of the adjusted primary election spending limit.
  - 4. Shall not make expenditures in the general election period in excess of the adjusted general election spending limit.
  - 5. Shall comply with section 16-948 regarding campaign accounts and section 16-953 regarding returning unused monies to the citizens clean election fund described in this article.
- B. Notwithstanding any law to the contrary, a nonparticipating candidate:
  - 1. Shall not accept contributions in excess of an amount that is twenty percent less than the limits specified in section 16-905, subsections A through G, as adjusted by the Secretary of State pursuant to section 16-905, subsection J. Any violation of this paragraph shall be subject to the civil penalties and procedures set forth in section 16-905, subsections L through P and section 16-924.
  - 2. Shall comply with section 16-958 regarding reporting, including filing reports with the Secretary of State indicating whenever (a) expenditures other than independent expenditures on behalf of the candidate, from the beginning of the election cycle to any date up to primary election day, exceed seventy percent of the original primary election spending limit applicable to a participating candidate seeking the same office, or (b)

contributions to a candidate, from the beginning of the election cycle to any date during the general election period, less expenditures made from the beginning of the election cycle through primary election day, exceed seventy percent of the original general election spending limit applicable to a participating candidate seeking the same office.

- C. Notwithstanding any law to the contrary, a candidate, whether participating or nonparticipating:
  - 1. If and only if specified in a written agreement signed by the candidate and one or more opposing candidates and filed with the citizens clean elections commission, shall not make any expenditure in the primary or general election period exceeding an agreed-upon amount lower than spending limits otherwise applicable by statute.
  - 2. Shall continue to be bound by all other applicable election and campaign finance statutes and rules, with the exception of those provisions in express or clear conflict with the provisions of this article.
- D. Notwithstanding any law to the contrary, any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars<sup>1</sup> in an election cycle, with the exception of any expenditure listed in section 16-920 and any independent expenditure by an organization arising from a communication directly to the organization's members, shareholders, employees, affiliated persons, and subscribers, shall file reports with the Secretary of State in accordance with section 16-958 so indicating, identifying the office and the candidate or group of candidates whose election or defeat is being advocated, and stating whether the person is advocating election or advocating defeat.

#### **§ 16-942 Civil penalties and forfeiture of office**

- A. The civil penalty for a violation of any contribution or expenditure limit in section 16-941 by or on behalf of a participating candidate shall be ten times the amount by which the expenditures or contributions exceed the applicable limit.
- B. In addition to any other penalties imposed by law, the civil penalty for a violation by or on behalf of any candidate of any reporting requirement imposed by this chapter shall be one hundred dollars per day for candidates for the legislature and three hundred dollars per day for candidates for statewide office.<sup>2</sup> The penalty imposed by this subsection shall be doubled if the amount not reported for a particular election cycle exceeds ten percent of the adjusted primary or general election spending limit. No penalty imposed pursuant to this subsection shall exceed twice the amount of expenditures or contributions not reported. The candidate and the candidate's campaign account shall be jointly and severally responsible for any penalty imposed pursuant to this subsection.
- C. Any campaign finance report filed indicating a violation of section 16-941, subsections A or B or section 16-941, subsection C, paragraph 1 involving an amount in excess of ten percent of the sum of the adjusted primary election spending limit and the adjusted general election spending limit for a particular candidate shall result in disqualification of a candidate or forfeiture of office.
- D. Any participating candidate adjudged to have committed a knowing violation of section 16-941, subsections A or C, paragraph 1 shall repay from the candidate's personal monies to the fund all monies expended from the candidate's campaign account and shall turn over the candidate's campaign account to the fund.
- E. All civil penalties collected pursuant to this article shall be deposited into the fund.

#### **§ 16-943 Criminal violations and penalties**

- A. A candidate, or any other person acting on behalf of a candidate, who knowingly violates section 16-941 is guilty of a class 1 misdemeanor.

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<sup>1</sup> For 2006, the adjusted amount is \$580. A.R.S. § 16-959(A).

<sup>2</sup> For 2006, the adjusted amounts are \$120 and \$350, respectively.

- B. Any person who knowingly pays any thing of value or any compensation for a qualifying contribution as defined in section 16-946 is guilty of a class 1 misdemeanor.
- C. Any person who knowingly provides false or incomplete information on a report filed under section 16-958 is guilty of a class 1 misdemeanor.

#### **§ 16-944 Fees imposed on lobbyists**

Beginning on January 1, 1999, an annual fee is imposed on all registered lobbyists representing (a) one or more persons in connection with a commercial or for-profit activity except public bodies or (b) a non-profit entity predominately composed of or acting on behalf of a trade association or other grouping of commercial or for-profit entities. The fee shall be in the amount of one hundred dollars annually per lobbyist and shall be collected by the Secretary of State and transmitted to the state treasurer for deposit into the fund.<sup>3</sup>

#### **§ 16-945 Limits on early contributions**

- A. A participating candidate may accept early contributions only from individuals and only during the exploratory period and the qualifying period, subject to the following limitations:
  - 1. Notwithstanding any law to the contrary, no contributor shall give, and no participating candidate shall accept, contributions from a contributor exceeding one hundred dollars during an election cycle.
  - 2. Notwithstanding any law to the contrary, early contributions to a participating candidate from all sources for an election cycle shall not exceed, for a candidate for governor, forty thousand dollars or, for other candidates, ten percent of the sum of the original primary election spending limit and the original general election spending limit.
  - 3. Qualifying contributions specified in section 16-946 shall not be included in determining whether the limits in this subsection have been exceeded.
- B. Early contributions specified in subsection A of this section and the candidate's personal monies specified in section 16-941, subsection A, paragraph 2 may be spent only during the exploratory period and the qualifying period. Any early contributions not spent by the end of the qualifying period shall be paid to the fund.
- C. If a participating candidate has a debt from an election campaign in this state during a previous election cycle in which the candidate was not a participating candidate, then, during the exploratory period only, the candidate may accept, in addition to early contributions specified in subsection A of this section, contributions subject to the limitations in section 16-941, subsection B, paragraph 1, or may exceed the limit on personal monies in section 16-941, subsection A, paragraph 2, provided that such contributions and monies are used solely to retire such debt.

#### **§ 16-946 Qualifying contributions**

- A. During the qualifying period, a participating candidate may collect qualifying contributions, which shall be paid to the fund.
- B. To qualify as a "qualifying contribution," a contribution must be:
  - 1. Made by a qualified elector as defined in section 16-121, who at the time of the contribution is registered in the electoral district of the office the candidate is seeking and who has not given another qualifying contribution to that candidate during that election cycle;
  - 2. Made by a person who is not given anything of value in exchange for the qualifying contribution;
  - 3. In the sum of five dollars, exactly;

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<sup>3</sup> In 2001, a Superior Court of Arizona found the lobbyist fee to be unconstitutional; however, the court also found the provision severable. *Lavis v. Bayless*, CV 2001-006078. Accordingly, the Commission refunded the lobbyist fees previously collected and no longer collects the fee.

4. Received unsolicited during the qualifying period or solicited during the qualifying period by a person who is not employed or retained by the candidate and who is not compensated to collect contributions by the candidate or on behalf of the candidate;
  5. If made by check or money order, made payable to the candidate's campaign committee, or if in cash, deposited in the candidate's campaign committee's account; and
  6. Accompanied by a three-part reporting slip that includes the printed name, registration address, and signature of the contributor, the name of the candidate for whom the contribution is made, the date, and the printed name and signature of the solicitor.
- C. A copy of the reporting slip shall be given as a receipt to the contributor, and another copy shall be retained by the candidate's campaign committee. Delivery of an original reporting slip to the Secretary of State shall excuse the candidate from disclosure of these contributions on campaign finance reports filed under article 1 of this chapter.

#### **§ 16-947 Certification as a participating candidate**

- A. A candidate who wishes to be certified as a participating candidate shall, before the end of the qualifying period, file an application with the Secretary of State, in a form specified by the citizens clean elections commission.
- B. The application shall identify the candidate, the office that the candidate plans to seek, and the candidate's party, if any, and shall contain the candidate's signature, under oath, certifying that:
1. The candidate has complied with the restrictions of section 16-941, subsection A during the election cycle to date.
  2. The candidate's campaign committee and exploratory committee have filed all campaign finance reports required under article 1 of this chapter during the election cycle to date and that they are complete and accurate.
  3. The candidate will comply with the requirements of section 16-941, subsection A during the remainder of the election cycle and, specifically, will not accept private contributions.
- C. The commission shall act on the application within one week. Unless, within that time, the commission denies an application and provides written reasons that all or part of a certification in subsection B of this section is incomplete or untrue, the candidate shall be certified as a participating candidate. If the commission denies an application for failure to file all complete and accurate campaign finance reports or failure to make the certification in subsection B, paragraph 3 of this section, the candidate may reapply within two weeks of the commission's decision by filing complete and accurate campaign finance reports and another sworn certification.

#### **§ 16-948 Controls on participating candidates' campaign accounts**

- A. A participating candidate shall conduct all financial activity through a single campaign account of the candidate's campaign committee. A participating candidate shall not make any deposits into the campaign account other than those permitted under sections 16-945 or 16-946.
- B. A candidate may designate other persons with authority to withdraw funds from the candidate's campaign account. The candidate and any person so designated shall sign a joint statement under oath promising to comply with the requirements of this title.

- C. The candidate or a person authorized under subsection B of this section shall pay monies from a participating candidate's campaign account directly to the person providing goods or services to the campaign and shall identify, on a report filed pursuant to article 1 of this chapter, the full name and street address of the person and the nature of the goods and services and compensation for which payment has been made. Notwithstanding the previous sentence, a campaign committee may establish one or more petty cash accounts, which in aggregate shall not exceed one thousand dollars at any time. No single expenditure shall be made from a petty cash account exceeding one hundred dollars.
- D. Monies in a participating candidate's campaign account shall not be used to pay fines or civil penalties, for costs or legal fees related to representation before the commission, or for defense of any enforcement action under this chapter. Nothing in this subsection shall prevent a participating candidate from having a legal defense fund.

#### **§ 16-949 Caps on spending from citizens clean elections fund**

- A. The commission shall not spend, on all costs incurred under this article during a particular calendar year, more than five dollars times the number of Arizona resident personal income tax returns filed during the previous calendar year. Tax reductions and tax credits awarded to taxpayers pursuant to section 16-954, subsections A and B shall not be considered costs incurred under this article for purposes of this section. The commission may exceed this limit during a calendar year, provided that it is offset by an equal reduction of the limit during another calendar year during the same four-year period beginning January 1 immediately after a gubernatorial election.
- B. The commission may use up to ten percent of the amount specified in subsection A of this section for reasonable and necessary expenses of administration and enforcement, including the activities specified in section 16-956, subsections B, C, and D. Any portion of the ten percent not used for this purpose shall remain in the fund.
- C. The commission shall apply ten percent of the amount specified in subsection A of this section for reasonable and necessary expenses associated with voter education, including the activities specified in section 16-956, subsection A.
- D. The state treasurer shall administer a citizens clean election fund from which costs incurred under this article shall be paid. The auditor general shall review the monies in, payments into, and expenditures from the fund no less often than every four years.

#### **§ 16-950 Qualification for clean campaign funding**

- A. A candidate who has made an application for certification may also apply, in accordance with subsection B of this section, to receive funds from the citizens clean elections fund, instead of receiving private contributions.
- B. To receive any clean campaign funding, the candidate must present to the Secretary of State no later than one week after the end of the qualifying period a list of names of persons who have made qualifying contributions pursuant to section 16-946 on behalf of the candidate. The list shall be divided by county. At the same time, the candidate must tender to the Secretary of State the original reporting slips identified in section 16-946, subsection C for persons on the list and an amount equal to the sum of the qualifying contributions collected. The Secretary of State shall deposit the amount into the fund.
- C. The Secretary of State shall select at random a sample of five percent of the number of non-duplicative names on the list and forward facsimiles of the selected reporting slips to the county recorder for the counties of the addresses specified in the selected slips. Within ten days, the county recorders shall provide a report to the Secretary of State identifying as disqualified any slips that are unsigned or undated or that the recorder is unable to verify as matching a person who is registered to vote, on the date specified on the slip, inside the electoral district of the office the candidate is seeking. The Secretary of State shall multiply the number of slips not disqualified by twenty, and if the result is greater than one hundred and ten percent of the quantity required, shall approve the candidate for funds, and if the

result is less than ninety percent of the quantity required, shall deny the application for funds. Otherwise, the Secretary of State shall forward facsimiles of all of the slips to the county recorders for verification, and the county recorders shall check all slips in accordance with the process above.

- D. To qualify for clean campaign funding, a candidate must have been approved as a participating candidate pursuant to section 16-947 and have obtained the following number<sup>4</sup> of qualifying contributions:
  - 1. For a candidate for legislature, two hundred.
  - 2. For candidate for mine inspector, five hundred.
  - 3. For a candidate for treasurer, superintendent of public instruction, or corporation commission, one thousand five hundred.
  - 4. For a candidate for Secretary of State or attorney general, two thousand five hundred.
  - 5. For a candidate for governor, four thousand.
- E. To qualify for clean campaign funding, a candidate must have met the requirements of this section and either be an independent candidate or meet the following standards:
  - 1. To qualify for funding for a party primary election, a candidate must have properly filed nominating papers and nominating petitions with signatures pursuant to chapter 3, articles 2 and 3 of this title in the primary of a political organization entitled to continued representation on the official ballot in accordance with section 16-804.
  - 2. To qualify for clean campaign funding for a general election, a candidate must be a party nominee of such a political organization.

#### **§ 16-951 Clean campaign funding**

- A. At the beginning of the primary election period, the commission shall pay from the fund to the campaign account of each candidate who qualifies for clean campaign funding:
  - 1. For a candidate who qualifies for clean campaign funding for a party primary election, an amount equal to the original primary election spending limit;
  - 2. For an independent candidate who qualifies for clean campaign funding, an amount equal to seventy percent of the sum of the original primary election spending limit and the original general election spending limit; or
  - 3. For a qualified participating candidate who is unopposed for an office in that candidate's primary, in the primary of any other party, and by any opposing independent candidate, an amount equal to five dollars times the number of qualifying contributions for that candidate certified by the commission.
- B. At any time after the first day of January of an election year, any candidate who has met the requirements of section 16-950 may sign and cause to be filed a nomination paper in the form specified by section 16-311, subsection A, with a nominating petition and signatures, instead of filing such papers after the earliest time set for filing specified by that subsection. Upon such filing and verification of the signatures, the commission shall pay the amount specified in subsection A of this section immediately, rather than waiting for the beginning of the primary election period.
- C. At the beginning of the general election period, the commission shall pay from the fund to the campaign account of each candidate who qualifies for clean campaign funding for the general election, except those candidates identified in subsection A, paragraphs 2 or 3 or subsection D of this section, an amount equal to the original general election spending limit.
- D. At the beginning of the general election period, the commission shall pay from the fund to the campaign account of a qualified participating candidate who has not received funds pursuant to subsection A, paragraph 3 of this section and who is unopposed by any other

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<sup>4</sup> For 2004, the minimum amounts of qualifying contributions were increased by 5%. For 2006, the minimum amounts of qualifying contributions are: 210 for legislature, 4,200 for governor, 2,625 for secretary of state and attorney general, 1,575 for treasurer, superintendent of public instruction and corporation commission, and 525 for mine inspector. See A.A.C R2-20-105(I).



party nominee or any opposing independent candidate an amount equal to five dollars times the number of qualifying contributions for that candidate certified by the commission.

- E. The special original general election spending limit, for a candidate who has received funds pursuant to subsection A, paragraphs 2 or 3 or subsection D of this section, shall be equal to the amount that the commission is obligated to pay to that candidate.

### **§ 16-952 Equal funding of candidates**

- A. Whenever during a primary election period a report is filed, or other information comes to the attention of the commission, indicating that a nonparticipating candidate who is not unopposed in that primary has made expenditures during the election cycle to date exceeding the original primary election spending limit, including any previous adjustments, the commission shall immediately pay from the fund to the campaign account of any participating candidate in the same party primary as the nonparticipating candidate an amount equal to any excess of the reported amount over the primary election spending limit, as previously adjusted, and the primary election spending limit for all such participating candidates shall be adjusted by increasing it by the amount that the commission is obligated to pay to a participating candidate.
- B. Whenever during a general election period a report has been filed, or other information comes to the attention of the commission, indicating that the amount a nonparticipating candidate who is not unopposed has received in contributions during the election cycle to date less the amount of expenditures the nonparticipating candidate made through the end of the primary election period exceeds the original general election spending limit, including any previous adjustments, the commission shall immediately pay from the fund to the campaign account of any participating candidate qualified for the ballot and seeking the same office as the nonparticipating candidate an amount equal to any excess of the reported difference over the general election spending limit, as previously adjusted, and the general election spending limit for all such participating candidates shall be adjusted by increasing it by the amount that the commission is obligated to pay to a participating candidate.
- C. For purposes of subsections A and B of this section the following expenditures reported pursuant to this article shall be treated as follows:
  - 1. Independent expenditures against a participating candidate shall be treated as expenditures of each opposing candidate, for purpose of subsection A of this section, or contributions to each opposing candidate, or purpose of subsection B of this section.
  - 2. Independent expenditures in favor of one or more nonparticipating opponents of a participating candidate shall be treated as expenditures of those nonparticipating candidates, for purpose of subsection A of this section, or contributions to those nonparticipating candidates, for purpose of subsection B of this section.
  - 3. Independent expenditures in favor of a participating candidate shall be treated, for every opposing participating candidate, as though the independent expenditures were an expenditure of a nonparticipating opponent, for purpose of subsection A of this section, or a contribution to a nonparticipating opponent, for purpose of subsection B of this section.
  - 4. Expenditures made during the primary election period by or on behalf of an independent candidate or a nonparticipating candidate who is unopposed in a party primary, shall be treated as though made during the general election period, and equalizing funds pursuant to subsection B of this section shall be paid at the start of the general election period.
  - 5. Expenditures made before the general election period that consist of a contract, promise, or agreement to make an expenditure during the general election period resulting in an extension of credit shall be treated as though made during the general election period, and equalizing funds pursuant to subsection B of this section shall be paid at the start of the general election period.
  - 6. Expenditures for or against a participating candidate promoting or opposing more than one candidate who are not running for the same office shall be allocated by the

commission among candidates for different offices based on the relative size or length and relative prominence of the reference to candidates for different offices.

- D. Upon applying for citizen funding pursuant to section 16-950, a participating candidate for legislature in a one-party-dominant legislative district who is qualified for clean campaign funding for the party primary election of the dominant party may choose to reallocate a portion of funds from the general election period to the primary election period. At the beginning of the primary election period, the commission shall pay from the fund to the campaign account of a participating candidate who makes this choice an extra amount equal to fifty percent of the original primary election spending limit, and the original primary election spending limit for the candidate who makes this choice shall be increased by the extra amount. For a primary election in which one or more participating candidates have made this choice, funds shall be paid under subsections A and B of this section only to the extent of any excess over the original primary election spending limit as so increased. If a participating candidate who makes this choice becomes qualified for clean campaign funding for the general election, the amount the candidate receives at the beginning of the general election period shall be reduced by the extra amount received at the beginning of the primary election period, and the original general election spending limit for that candidate shall be reduced by the extra amount. For a general election in which a participating candidate has made this choice, funds shall be paid under subsections A and B of this section only to the extent of any excess over the original general election spending limit, without such reduction, unless the candidate who has made this choice is the only participating candidate in the general election, in which case such funds shall be paid to the extent of excess over the original general election spending limit with such reduction. For purpose of this subsection, a one-party-dominant legislative district is a district in which the number of registered voters registered in the party with the highest number of registered voters exceeds the number of registered voters registered to each of the other parties by an amount at least as high as ten percent of the total number of voters registered in the district. The status of a district as a one-party-dominant legislative district shall be determined as of the beginning of the qualifying period.
- E. If an adjusted spending limit reaches three times the original spending limit for a particular election, then the commission shall not pay any further amounts from the fund to the campaign account of any participating candidate, and the spending limit shall not be adjusted further.

#### **§ 16-953 Return of monies to the citizens clean elections fund**

- A. At the end of the primary election period, a participating candidate who has received monies pursuant to section 16-951, subsection A, paragraph 1 shall return to the fund all monies in the candidate's campaign account above an amount sufficient to pay any unpaid bills for expenditures made during the primary election period and for goods or services directed to the primary election.
- B. At the end of the general election period, a participating candidate shall return to the fund all monies in the candidate's campaign account above an amount sufficient to pay any unpaid bills for expenditures made before the general election and for goods or services directed to the general election.
- C. A participating candidate shall pay all uncontested and unpaid bills referenced in this section no later than thirty days after the primary or general election. A participating candidate shall make monthly reports to the commission concerning the status of the dispute over any contested bills. Any monies in a candidate's campaign account after payment of bills shall be returned promptly to the fund.
- D. If a participating candidate is replaced pursuant to section 16-343, and the replacement candidate files an oath with the Secretary of State certifying to section 16- 947, subsection B, paragraph 3, the campaign account of the participating candidate shall be transferred to the replacement candidate and the commission shall certify the replacement candidate as a participating candidate without requiring compliance with section 16-950 or the remainder of

section 16-947. If the replacement candidate does not file such an oath, the campaign account shall be liquidated and all remaining monies returned to the fund.

**§ 16-954 Clean elections tax reduction; return of excess monies**

- A. For tax years beginning on or after January 1, 1998, a taxpayer who files on a state income tax return form may designate a five-dollar voluntary contribution per taxpayer to the fund by marking an optional check-off box on the first page of the form. A taxpayer who checks this box shall receive a five-dollar reduction in the amount of tax, and five dollars from the amount of taxes paid shall be transferred by the department of revenue to the fund. The department of revenue shall provide check-off boxes, identified as the clean elections fund tax reduction, on the first page of income tax return forms, for designations pursuant to this subsection.
- B. Any taxpayer may make a voluntary donation to the fund by designating the fund on an income tax return form filed by the individual or business entity or by making a payment directly to the fund. Any taxpayer making a donation pursuant to this subsection shall receive a dollar-for-dollar tax credit not to exceed twenty percent of the tax amount on the return or five hundred dollars<sup>5</sup> per taxpayer, whichever is higher. Donations made pursuant to this section are otherwise not tax deductible and cannot be designated as for the benefit of a particular candidate, political party, or election contest. The department of revenue shall transfer to the fund all donations made pursuant to this subsection. The department of revenue shall provide a space, identified as the clean elections fund tax credit, on the first page of income tax return forms, for donations pursuant to this subsection.
- C. Beginning January 1, 1999, an additional surcharge of ten percent shall be imposed on all civil and criminal fines and penalties collected pursuant to section 12- 116.01 and shall be deposited into the fund.
- D. At least once per year, the commission shall project the amount of monies that the fund will collect over the next four years and the time such monies shall become available. Whenever the commission determines that the fund contains more monies than the commission determines that it requires to meet current debts plus expected expenses, under the assumption that expected expenses will be at the expenditure limit in section 16-949, subsection A, and taking into account the projections of collections, the commission shall designate such monies as excess monies and so notify the state treasurer, who shall thereupon return the excess monies to the general fund.
- E. At least once per year, the commission shall project the amount of citizen funding for which all candidates will have qualified pursuant to this article for the following calendar year. By the end of each year, the commission shall announce whether the amount that the commission plans to spend the following year pursuant to section 16-949, subsection A exceeds the projected amount of citizen funding. If the commission determines that the fund contains insufficient monies or the spending cap would be exceeded were all candidates' accounts to be fully funded, then the commission may include in the announcement specifications for decreases in the following parameters, based on the commission's projections of collections and expenses for the fund, made in the following order:
  - 1. First, the commission may announce a decrease in the matching cap under section 16-952, subsection E from three times to an amount between three and one times.
  - 2. Next, the commission may announce that the fund will provide equalization monies under section 16-952, subsections A and B as a fraction of the amounts there specified.
  - 3. Finally, the commission may announce that the fund will provide monies under section 16-951 as a fraction of the amounts there specified.
- F. If the commission cannot provide participating candidates with all monies specified under sections 16-951 and 16-952, as decreased by any announcement pursuant to subsection E of this section, then the commission shall allocate any reductions in payments proportionately among candidates entitled to monies and shall declare an emergency. Upon declaration of an

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<sup>5</sup> For 2006, the adjusted amount is \$580. A.R.S. § 16-959(A).

emergency, a participating candidate may accept private contributions to bring the total monies received by the candidate from the fund and from such private contributions up to the adjusted spending limits, as decreased by any announcement made pursuant to subsection E of this section.

#### **§ 16-955 Citizens clean election commission; structure**

- A. The citizens clean elections commission is established consisting of five members. No more than two members of the commission shall be members of the same political party. No more than two members of the commission shall be residents of the same county. No one shall be appointed as a member who does not have a registration pursuant to chapter 1 of this title that has been continuously recorded for at least five years immediately preceding appointment with the same political party or as an independent.
- B. The commission on appellate court appointments shall nominate candidates for vacant commissioner positions who are committed to enforcing this article in an honest, independent, and impartial fashion and to seeking to uphold public confidence in the integrity of the electoral system. Each candidate shall be a qualified elector who has not, in the previous five years in this state, been appointed to, been elected to, or run for any public office, including precinct committeeman, or served as an officer of a political party.<sup>6</sup>
- C. Initially, the commission on appellate court appointments shall nominate five slates, each having three candidates, before January 1, 1999. No later than February 1, 1999, the governor shall select one candidate from one of the slates to serve on the commission for a term ending January 31, 2004. Next, the highest-ranking official holding a statewide office who is not a member of the same political party as the governor shall select one candidate from another one of the slates to serve on the commission for a term ending January 31, 2003. Next, the second-highest-ranking official holding a statewide office who is a member of the same political party as the governor shall select one candidate from one of the three remaining slates to serve on the commission for a term ending January 31, 2002. Next, the second-highest-ranking official holding a statewide office who is not a member of the same political party as the governor shall select one candidate from one of the two remaining slates to serve on the commission for a term ending January 31, 2001. Finally, the third-highest-ranking official holding a statewide office who is a member of the same political party as the governor shall elect one candidate from the last slate to serve on the commission for a term ending January 31, 2000. For purpose of this section, the ranking of officials holding statewide office shall be governor, Secretary of State, attorney general, treasurer, superintendent of public instruction, corporation commissioners in order of seniority, mine inspector, the members of the supreme court in order of seniority, senate majority and minority leaders, and house majority and minority leaders.
- D. One commissioner shall be appointed for a five-year term beginning February 1 of every year beginning with the year 2000. The commission on appellate court appointments shall nominate one slate of three candidates before January 1 of each year beginning in the year 2000, and the governor and the highest-ranking official holding a statewide office who is not a member of the same political party as the governor shall alternate filling such vacancies. The vacancy in the year 2000 shall be filled by the governor.
- E. Members of the commission may be removed by the governor, with concurrence of the senate, for substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, or violation of this section, after written notice and opportunity for a response.
- F. If a commissioner does not complete his or her term of office for any reason, the commission on appellate court appointments shall nominate one slate of three candidates as soon as

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<sup>6</sup> The Arizona Supreme Court held that the Commission on Appellate Court Appointments did not have the authority to nominate Clean Elections Commissioners; members of the Arizona Supreme Court could not appoint Clean Elections Commissioners; and the provisions could be severed from the Act. *Citizens Clean Elections Commissioners v. Myers*, 196 Ariz. 516 (2000).

possible in the first thirty days after the commissioner vacates his or her office and a replacement shall be selected from the slate within thirty days of nomination of the slate. The highest-ranking official holding a statewide office who is a member of the political party of the official who nominated the commissioner who vacated office shall nominate the replacement, who shall serve as commissioner for the unexpired portion of the term. A vacancy or vacancies shall not impair the right of the remaining members to exercise all of the powers of the board.

- G. Commissioners are eligible to receive compensation in an amount of two hundred dollars for each day on which the commission meets and reimbursement of expenses pursuant to title 38, chapter 4, article 2.
- H. The commissioners shall elect a chair to serve for each calendar-year period from among their members whose terms expire after the conclusion of that year. Three commissioners shall constitute a quorum.
- I. A member of the commission shall serve no more than one term and is not eligible for reappointment. No commissioner, during his or her tenure or for three years thereafter, shall seek or hold any other public office, serve as an officer of any political committee, or employ or be employed as a lobbyist.
- J. The commission shall appoint an executive director who shall not be a member of the commission and who shall serve at the pleasure of the commission. The executive director is eligible to receive compensation set by the board within the range determined under section 38-611. The executive director, subject to title 41, chapter 4, articles 5 and 6, shall employ, determine the conditions of employment, and specify the duties of administrative, secretarial, and clerical employees as the director deems necessary.

#### **§ 16-956 Voter education and enforcement duties**

- A. The commission shall:
  - 1. Develop a procedure for publishing a document or section of a document having a space of predefined size for a message chosen by each candidate. For the document that is mailed before the primary election, the document shall contain the names of every candidate for every statewide and legislative district office in that primary election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. For the document that is mailed before the general election, the document shall contain the names of every candidate for every statewide and legislative district office in that general election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. The commission shall mail one copy of each document to every household that contains a registered voter. For the document that is mailed before the primary election, the mailing may be made over a period of days but shall be mailed in order to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the primary election. The commission may mail the second document over a period of days but shall mail the second document in order to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the general election. The primary election and general election documents published by the commission shall comply with all of the following:
    - (a) For any candidate who does not submit a message pursuant to this paragraph, the document shall include with the candidate's listing the words "no statement submitted".
    - (b) The document shall have printed on its cover the words "citizens clean elections commission voter education guide" and the words "primary election" or "general election" and the applicable year. The document shall also contain at or near the bottom of the document cover in type that is no larger than one-half the size of the type used for "citizens clean elections commission voter education guide" the words "paid for by the citizens clean elections fund".

- (c) In order to prevent voter confusion, the document shall be easily distinguishable from the publicity pamphlet that is required to be produced by the Secretary of State pursuant to section 19-123.
  - 2. Sponsor debates among candidates, in such manner as determined by the commission. The commission shall require participating candidates to attend and participate in debates and may specify by rule penalties for nonparticipation. The commission shall invite and permit nonparticipating candidates to participate in debates.
  - 3. Prescribe forms for reports, statements, notices and other documents required by this article.
  - 4. Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and explaining the duties of persons and committees under this article.
  - 5. Produce a yearly report describing the commission's activities and any recommendations for changes of law, administration or funding amounts and accounting for monies in the fund.
  - 6. Adopt rules to implement the reporting requirements of section 16-958, subsections D and E.
  - 7. Enforce the provisions of this article, ensure that money from the fund is placed in candidate campaign accounts or otherwise spent as specified in this article and not otherwise, monitor reports filed pursuant to this chapter and financial records of candidates as needed to ensure that equalization monies are paid promptly to opposing qualified candidates under section 16-952 and ensure that money required by this article to be paid to the fund is deposited in the fund.
- B. The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or the exercise of its powers.
  - C. The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. Commission rule making is exempt from title 41, chapter 6, article 3, except that the commission shall submit the rules for publication and the Secretary of State shall publish the rules in the Arizona administrative register. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed.
  - D. Based on the results of the elections in the year 2002 or any quadrennial election thereafter, and within six months after such election, the commission may adopt rules changing the number of qualifying contributions required for any office from those listed in section 16-950, subsection D, by no more than twenty per cent of the number applicable for the preceding election.

### **§ 16-957 Enforcement procedure**

- A. If the commission finds that there is reason to believe that a person has violated any provision of this article, the commission shall serve on that person an order stating with reasonable particularity the nature of the violation and requiring compliance within fourteen days. During that period, the alleged violator may provide any explanation to the commission, comply with the order, or enter into a public administrative settlement with the commission.
- B. Upon expiration of the fourteen days, if the commission finds that the alleged violator remains out of compliance, the commission shall make a public finding to that effect and issue an order assessing a civil penalty in accordance with section 16-942, unless the commission publishes findings of fact and conclusions of law expressing good cause for reducing or excusing the penalty. The violator has fourteen days from the date of issuance of the order assessing the penalty to appeal to the superior court as provided in title 12, chapter 7, article 6.

- C. Any candidate in a particular election contest who believes that any opposing candidate has violated this article for that election may file a complaint with the commission requesting that action be taken pursuant to this section. If the commission fails to make a finding under subsection A of this section within thirty days after the filing of such a complaint, the candidate may bring a civil action in the superior court to impose the civil penalties prescribed in this section.

#### **§ 16-958 Manner of filing reports**

- A. Any person who has previously reached the dollar amount specified in section 16- 941, subsection D for filing an original report shall file a supplemental report each time previously unreported independent expenditures specified by that subsection exceeds one thousand dollars. Any person who has previously reached the dollar amounts specified in section 16-941, subsection B, paragraph 2 for filing an original report shall file a supplemental report to declare that previously unreported expenditures or contributions specified by that paragraph exceed (1) ten percent of the original primary election spending limit or twenty-five thousand dollars, whichever is lower, before the general election period, or (2) ten percent of the original general election spending limit or twenty-five thousand dollars, whichever is lower, during the general election period. Such reports shall be filed at the times specified in subsection B of this section and shall identify the dollar amount being reported, the candidate, and the date.
- B. Any person who must file an original report pursuant to section 16-941, subsection B, paragraph 2 or subsection D, or who must file a supplemental report for previously unreported amounts pursuant to subsection A of this section, shall file as follows:
1. Before the beginning of the primary election period, the person shall file a report on the first of each month, unless the person has not reached the dollar amount for filing an original or supplemental report on that date.
  2. Thereafter, except as stated in paragraph 3 of this subsection, the person shall file a report on any Tuesday by which the person has reached the dollar amount for filing an original or supplemental report.
  3. During the last two weeks before the primary election and the last two weeks before the general election, the person shall file a report within one business day of reaching the dollar amount for filing an original or supplemental report.
- C. Any filing under this article on behalf of a candidate may be made by the candidate's campaign committee. All candidates shall deposit any check received by and intended for the campaign and made payable to the candidate or the candidate's campaign committee, and all cash received by and intended for the campaign, in the candidate's campaign account before the due date of the next report specified in subsection B of this section. No candidate or person acting on behalf of a candidate shall conspire with a donor to postpone delivery of a donation to the campaign for the purpose of postponing the reporting of the donation in any subsequent report.
- D. The Secretary of State shall immediately notify the commission of the filing of each report under this section and deliver a copy of the report to the commission, and the commission shall promptly mail or otherwise deliver a copy of each report filed pursuant to this section to all participating candidates opposing the candidate identified in section 16-941, subsection B, paragraph 2 or subsection D.
- E. Any report filed pursuant to this section or section 16-916, subsection A, paragraph 1 or subsection B shall be filed in electronic format. The Secretary of State shall distribute computer software to political committees to accommodate such electronic filing.
- F. During the primary election period and the general election period, all candidates shall make available for public inspection all bank accounts, campaign finance reports, and financial records relating to the candidate's campaign, either by immediate disclosure through electronic means or at the candidate's campaign headquarters, in accordance with rules adopted by the commission.

### **§ 16-959 Inflationary and other adjustments of dollar values**

- A. Every two years, the Secretary of State shall modify the dollar values specified in the following parts of this article, in the manner specified by section 16-905, subsection J, to account for inflation; section 16-941, subsection A, paragraph 2 or subsection D; section 16-942, subsection B; section 16-944; section 16-945, subsection A, paragraphs 1 and 2; section 16-948, paragraph C; section 16-954, subsection B; section 16-955, subsection G; and section 16-961, subsections G and H. In addition, the Secretary of State shall make a similar inflation adjustment by modifying the dollar values in section 16-949, subsection A and section 16-954, subsection A to the nearest dollar. In addition, every two years, the Secretary of State shall change the dollar values in section 16-961, subsections G and H in proportion to the change in the number of Arizona resident personal income tax returns filed during the previous calendar year.
- B. Based on the results of the elections in the year 2002 or any quadrennial election thereafter, and within six months after such election, the commission may adopt rules in a public meeting reallocating funds available to all candidates between the primary and general elections by selecting a fraction for primary election spending limits that is between one third and one half of the spending limits for the election as a whole. For each office, the primary election spending limit shall be modified to be the sum of the primary and general spending limits times the selected fraction, and the general election spending limit shall be modified to be the same sum times one less the selected fraction.

### **§ 16-960 Severability**

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. In any court challenge to the validity of this article, the commission and Arizonans for clean elections shall have standing to intervene.

### **§ 16-961 Definitions**

- A. The terms “candidate’s campaign committee,” “contribution,” “expenditures,” “exploratory committee,” “independent expenditure,” “personal monies,” “political committee,” and “statewide office” are defined in section 16-901.
- B.
  - 1. “Election cycle” means the period between successive general elections for a particular office.
  - 2. “Exploratory period” means the period beginning on the day after a general election and ending the day before the start of the qualifying period.
  - 3. “Qualifying period” means the period beginning on the first day of August in a year preceding an election, for an election for a statewide office, or on the first day of January of an election year, for an election for legislator, and ending seventy-five days before the day of the general election.
  - 4. “Primary election period” means the nine-week period ending on the day of the primary election.
  - 5. “General election period” means the period beginning on the day after the primary election and ending on the day of the general election.
  - 6. For any recall election, the qualifying period shall begin when the election is called and last for thirty days, there shall be no primary election period, and the general election period shall extend from the day after the end of the qualifying period to the day of the recall election. For recall elections, any reference to “general election” in this article shall be treated as if referring to the recall election.
- C.
  - 1. “Participating candidate” means a candidate who becomes certified as a participating candidate pursuant to section 16-947.
  - 2. “Nonparticipating candidate” means a candidate who does not become certified as a participating candidate pursuant to section 16-947.



3. Any limitation of this article that is applicable to a participating candidate or a nonparticipating candidate shall also apply to that candidate's campaign committee or exploratory committee.
- D. "Commission" means the citizens clean elections commission established pursuant to section 16-955.
- E. "Fund" means the citizens clean election fund defined by this article.
- F.
  1. "Party nominee" means a person who has been nominated by a political party pursuant to sections 16-301 or 16-343.
  2. "Independent candidate" means a candidate who has properly filed nominating papers and nominating petitions with signatures pursuant to section 16-341.
  3. "Unopposed," with reference to an election for a member of the house of representatives, means opposed by no more than one other candidate.
- G. "Primary election spending limits" means:
  1. For a candidate for legislature, ten thousand dollars.<sup>7</sup>
  2. For candidate for mine inspector, twenty thousand dollars.
  3. For a candidate for treasurer, superintendent of public instruction, or corporation commission, forty thousand dollars.
  4. For a candidate for Secretary of State or attorney general, eighty thousand dollars.
  5. For a candidate for governor, three hundred eighty thousand dollars.
- H. "General election spending limits" means amounts fifty percent greater than the amounts specified in subsection G of this section.
- I.
  1. "Original" spending limit means a limit specified in subsections G and H of this section, as adjusted pursuant to section 16-959, or a special amount expressly set for a particular candidate by a provision of this title.
  2. "Adjusted" spending limit means an original spending limit as further adjusted to account for reported overages pursuant to section 16-952.

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<sup>7</sup> For 2006, the adjusted amounts are: \$453,849 for governor, \$95,550 for secretary of state and attorney general, \$47,770 for treasurer, superintendent of public instruction and corporation commissioner, \$23, 980 for mine inspector and \$11,945 for legislature.

## Arizona Administration Code, Title 2, Chapter 20

### Article 1. General Provisions

#### R2-20-101. Definitions

In addition to the definitions provided in A.R.S. §§ 16-901 and 16-961, the following shall apply to the chapter, unless the context otherwise requires:

1. “Act” means the Citizens Clean Elections Act set forth in the Arizona Revised Statutes, Title 16, Chapter 6, Article 2.
2. “Audit” means a written report pertaining to an examination of a candidate’s campaign finances that is reviewed by the Commission in accordance with A.A.C. Title 2, Article 4.
3. “Campaign account” means an account designated by a political committee that is used solely for political campaign purposes as required in A.R.S. § 16-902(C).
4. “Candidate” means an individual who receives or gives consent for receipt of a contribution for the candidate’s nomination for or election to any office in this state, and includes a candidate’s campaign committee, the political committee designated and authorized by a candidate, or any agents or personnel of the candidate.
5. “Current campaign account” means a campaign account used solely for election campaign purposes in the present election cycle.
6. “Direct campaign purpose” includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of a candidate. This does not include the candidate’s personal appearance, support, or support of a candidate’s family member.
7. “Early contributions” means private contributions that are permitted pursuant to A.R.S. § 16-945.
8. “Election Cycle,” for the purposes of providing equalizing funds, means the time period between 21 days after the preceding general election and the current general election date.
9. “Examination” means an inspection by the Commission or agent of the Commission of a candidate’s books, records, accounts, receipts, disbursements, debts, and obligations, bank account records, and campaign finance reports related to the candidate’s campaign, which may include fieldwork, or a visit to the campaign headquarters, to ensure compliance with campaign finance laws and rules.
10. “Expressly advocates” means:
  - a. Conveying a communication containing a phrase such as “vote for,” “elect,” “re-elect,” “support,” “endorse,” “cast your ballot for,” “(name of candidate) in (year),” “(name of candidate) for (office),” “vote against,” “defeat,” “reject,” or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.
  - b. Making a general public communication, such as in broadcast medium, newspaper, magazine, billboard, or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s):
    - i. That in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements of the candidate(s) or opponents, or
    - ii. In the 16 week-period immediately preceding a general election.
  - c. A communication within the scope of paragraph b shall not be considered as one that “expressly advocates” merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party, or a person who is coordinating with a candidate or candidate’s agent.

11. "Family member" means parent, grandparent, spouse, child, or sibling of the candidate or a parent or spouse of any of those persons.
12. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.
13. "Fixed asset" means tangible property usable in a capacity that will benefit the candidate for a period of more than one year from the date of acquisition.
14. "Fund" means the Citizens Clean Elections Fund established pursuant to A.R.S. § 16-949(D).
15. "Future campaign account" means a campaign account that is used solely for campaign election purposes in an election that does not include present or prior elections.
16. "Independent candidate" means a candidate who is registered as an independent or with no party preference or who is registered with a political party that is not eligible for recognition on the ballot.
17. "Prior campaign account" means a campaign account used solely for campaign election purposes in a prior election.
18. "Public funds" means all funds deposited into the Citizens Clean Elections Fund and all funds disbursed by the Commission to a participating candidate.
19. "Opposed" means a candidate who will appear on the ballot and:
  - a. In a primary election for state representative, a candidate who has opposition for the same office from two members of the same party or will be opposed in the general election by two or more other candidates for the same office. Such opposition in the general election can be from an independent candidate, a candidate from another party, or a candidate who is a member of a political party that is not eligible for recognition on the ballot.
  - b. In a party primary election for any office but state representative, a candidate who has opposition for the same office from a member of the same party, or will be opposed in the general election by an independent, a candidate from another party, or a candidate who is a member of a political party that is not eligible for recognition on the ballot.
  - c. In the general election for state representative, a candidate who has at least two opponents on the ballot, competing for election in the same district.
  - d. In the general election for any office but state representative, has at least one opponent on the ballot, competing for the same office.
20. "Solicitor" means a person who is eligible to be registered to vote in this state and seeks qualifying contributions from qualified electors of this state.

#### **R2-20-102. Applicability**

The Citizens Clean Elections Act and these rules apply to all candidates seeking office for governor, attorney general, Secretary of State, treasurer, superintendent of public instruction, corporation Commissioner, mine inspector, and legislator.

#### **R2-20-103. Communications: Time and Method**

- A. General rule. In computing any period of time prescribed or allowed by the Act or these rules, unless otherwise specified, days are calculated by calendar days, and the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. The term "legal holiday" includes New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the state.
- B. Special rule for periods less than 7 days. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- C. Special rule for service by regular mail. Whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by

- or upon the Commission by regular mail, 3 calendar days shall be added to the prescribed period.
- D. Special rule for service by certified mail. Whenever the Commission or any person is required to do some act within a prescribed period after the service of paper by or upon the Commission, the time period shall begin on the date the recipient signs for the certified mail. If the recipient does not date the certified mail receipt, the postmark on the certified mail receipt will be used as the date of receipt.
  - E. The Commission shall use the address of the candidate that is provided on the application for certification filed pursuant to A.R.S. § 16-947. A candidate may designate in writing for the Commission to send written correspondence to a person other than the candidate.
  - F. If possible, the Commission shall furnish a copy of all communications electronically.
  - G. Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with a person of suitable age and discretion residing therein, by mailing a copy by registered or certified mail to his or her last known address, or by any other method whereby actual notice is given.
  - H. When the person to be served is not an individual, delivery of subpoenas, orders and notifications may be made by mailing a copy by registered or certified mail to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by registered or certified mail to such representative at his or her last known address, or by any other method whereby actual notice is given.

**R2-20-104. Certification as a participating candidate**

- A. A nonparticipating candidate who accepts contributions up to the limits authorized by A.R.S. § 16-905, but later chooses to run as a participating candidate, shall:
  - 1. Make the change to participating candidate status during the exploratory and qualifying periods only;
  - 2. Return the amount of each contribution in excess of the individual contribution limit for participating candidates;
  - 3. Return all Political Action Committee (PAC) monies received.
  - 4. Not have spent contributions exceeding the early contribution limit, or any part of a contribution exceeding the early contribution limit; and
  - 5. Comply with all provisions of A.R.S. § 16-941.
- B. Money from prior election. If a nonparticipating candidate has a cash balance remaining in the campaign account from the prior election cycle, the candidate may seek certification as a participating candidate in the current election after:
  - 1. Transferring money from the prior campaign account to the candidate's current election campaign account. The amount transferred shall not exceed the permitted personal monies, early contributions, and debt-retirement contributions, as defined in A.R.S. § 16-945(C);
  - 2. Spending the money lawfully prior to April 30 of an election year in a way that does not constitute a direct campaign purpose and does not meet the definition of "expenditure" under A.R.S. § 16-901(8); and the event or item purchased is completed or otherwise used and depleted prior to April 30 of an election year;
  - 3. Remitting the money to the Fund;
  - 4. Disposing of the money in accordance with A.R.S. § 16-915.01; or
  - 5. Holding the money in the prior election campaign account, not to be used during the current election, except as provided pursuant to this rule.
- C. Application for Certification as a Participating Candidate. Pursuant to A.R.S. § 16-947, a candidate seeking certification shall file with the Secretary of State a Commission-approved application and a campaign finance report reflecting all campaign activity to date, in

accordance with A.R.S. § 16-915. In the application, a candidate shall certify under oath that the candidate:

1. Agrees to use all Clean Elections funding for direct campaign purposes only;
2. Has filed a campaign finance report, showing all campaign activity to date in the current election cycle.
3. Will comply with all requirements of the Act and Commission rules;
4. Is subject to all enforcement actions by the Commission as authorized by the Act and Commission rules;
5. Has the burden of proving that expenditures made by or on behalf of the candidate are for direct campaign purposes;
6. Will keep and furnish to the Commission all documentation relating to expenditures, receipts, funding, books, records (including bank records for all accounts), and supporting documentation and other information that the Commission may request;
7. Will permit an audit or examination by the Commission of all receipts and expenditures including those made by the candidate. The candidate shall also provide any material required in connection with an audit, investigation, or examination conducted by the Commission. The candidate shall facilitate the audit by making available in one central location, such as the Commission's office space, records and such personnel as are necessary to conduct the audit or examination, and shall pay any amounts required to be repaid;
8. Will submit the name and mailing address of the person who is entitled to receive equalizing fund payments on behalf of the candidate and the name and address of the campaign depository designated by the candidate. Changes in the information required by this paragraph shall not be effective until submitted to the Commission in a letter signed, or submitted electronically, by the candidate or the committee treasurer.
9. Will pay any civil penalties included in a conciliation agreement or otherwise imposed against the candidate.
10. Will timely file all campaign finance reports with the Secretary of State in an electronic format.
11. Will file an amended application for certification reporting any change in the information prescribed in the application for certification within 5 days after the change.

D. If certified as a participating candidate, the candidate shall:

1. Only accept early contributions from individuals during the exploratory and qualifying periods in accordance with A.R.S. § 16-945. No contributions may be accepted from political action committees, political parties or corporations;
2. Not accept any private contributions, other than early contributions and a limited number of \$5 qualifying contributions;
3. Make expenditures of personal monies of no more than the amounts prescribed in A.R.S. § 16-941(A)(2) for legislative candidates and for statewide office candidates;
4. Conduct all activity through a single campaign account. A participating candidate shall only deposit early contributions, qualifying contributions and Clean Elections funds into the candidate's current campaign account. The campaign account shall not be used for any non-direct campaign purpose as provided in Article 7 of these rules;
5. Attend at least one candidate training class sponsored by the Commission, and cause the candidate's campaign treasurer to attend at least one candidate training class, during the election cycle. If the candidate or the treasurer is unable to attend a training class, the candidate or treasurer shall:
  - a. Notify the Commission that the candidate or treasurer is unable to attend a training class. The Commission will then send that person the Commission training materials; and
  - b. The candidate or treasurer shall sign and send to the Commission a statement certifying that he or she has received and reviewed the Commission training materials;

6. Limit campaign expenditures. Prior to qualifying for clean elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand. Upon approval for funding by the Secretary of State's office, a candidate may incur debt or make an expenditure, not to exceed the sum of the cash on hand and the applicable spending limit.
- E. Personal loans. A participating candidate may loan his or her campaign committee personal monies during the exploratory and qualifying periods only. The total sum of the loans shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2). If the loan is to be repaid, the loans shall be repaid promptly upon receipt of Clean Elections funds if the participating candidate qualifies for Clean Elections funding. Loans from a bank, or other institution listed in A.R.S. § 16-901(5)(b)(vii) to a candidate or his or her campaign committee shall be considered personal monies and shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2).
- F. Officeholder Expenses. Prior to April 30 of an election year, an elected official may raise or spend money to defray the expense of performing officeholder duties, and the event or item purchased shall be completed or otherwise used and depleted prior to April 30 of an election year, as follows:
1. The candidate may first exhaust all surplus monies from prior campaign accounts pursuant to subsection B of this rule or may use personal monies for officeholder expenses;
  2. Money raised shall be only from individuals and the maximum raised from an individual during the election cycle shall not exceed one-half the early contribution limit;
  3. The sum of the money raised or spent shall not exceed 2 times the early contribution limit applicable to the officeholder's current office;
  4. For an officeholder's future campaign as a:
    - a. Participating candidate-
      - i. Money raised pursuant to this subsection will not be deemed early contributions, and
      - ii. Personal money spent pursuant to this subsection shall not apply to personal money expenditure limits provided in A.R.S. §16-941(A)(2).
    - b. Nonparticipating candidate-
      - i. Money raised or spent pursuant to this subsection will not be calculated in matching funds to opponents as provided in A.R.S. §16-952, and
      - ii. Money raised or spent pursuant to this subsection will not trigger the reporting requirements provided in A.R.S. §§16-941(D) & -958.
  5. Any money raised or spent in excess of the limits established in this rule, however, shall be calculated as early contributions or personal monies for participating candidates, or for matching funds and reporting requirements for nonparticipating candidates.
  6. Money raised or spent for officeholder expenses shall be reported under campaign finance reporting requirements pursuant to A.R.S. Title 16, Chapter 6, Article 1 as follows:
    - a. The officeholder shall establish an account for officeholder expenses, which shall be separate from any candidate campaign account;
    - b. The account shall be designated on the statement of organization as "Officeholder Expense Account;" and
    - c. Any money remaining in the officeholder expense account after April 30 of an election year shall either not be spent for the remainder of the calendar year, or shall be remitted to the Clean Elections Fund;
  7. Money in the officeholder expense account shall not be used for direct campaign purposes or in connection with the officeholder's future campaign for elective office; and
  8. Permissible uses of the money in the officeholder expense account include:

- a. Expenditure for office equipment and supplies;
  - b. Expenditures for work-related travel;
  - c. Donations to tax-exempt charitable organizations; or
  - d. Expenditures to meet or communicate with constituents.
- G. A participating candidate may raise early contributions for election to one office and choose to run for election to another office.
- H. If the Commission has reason to believe by a preponderance of the evidence that a participating candidate is not in compliance with the Act or Commission rules, the Commission may decertify a candidate, deny or suspend funding, order repayment of funds, or specify a penalty of no more than \$500.
- I. Contributions to officeholder expense accounts are subject to the restrictions of A.R.S. § 41-1234.01, contributions prohibited during session; exceptions.

**R2-20-105. Certification for funding**

- A. After a candidate is certified as a participating candidate, pursuant to A.R.S. § 16-947, in accordance with the procedure set forth in A.A.C. R2-20-104, that candidate may collect qualifying contributions only during the qualifying period.
- B. A participating candidate must submit to the Secretary of State, a list of names of persons who made qualifying contributions, an application for funding prescribed by the Secretary of State, the minimum number of original reporting slips, and an amount equal to the sum of the qualifying contributions collected pursuant to A.R.S. 16-950 no later than one week after the end of the qualifying period. A candidate may develop his or her own 3-part reporting slip for qualifying contributions, or one that is photocopied or computer-reproduced, if the form substantially complies with the form prescribed by the Commission. The candidate must comply with the Citizens Clean Elections Act and ensure that the original qualifying slip is tendered to the Secretary of State, a copy remains with the candidate, and that a copy is given to the contributor.
- C. A solicitor who seeks signatures and qualifying contributions on behalf of a participating candidate shall provide his or her residential address, typed or printed name and signature on each reporting slip. The solicitor shall also sign a sworn statement on the contribution slip avowing that the contributor signed the slip, that the contributor contributed the \$5, that based on information and belief, the contributor's name and address are correctly stated and that each contributor is a qualified elector of this state. Nothing in this rule shall prohibit the use of direct mail to obtain qualifying contributions nor prohibit the contributor from also being the solicitor.
- D. The Secretary of State has the authority to approve or deny a candidate for Clean Elections funding, pursuant to A.R.S. § 16-950(C), based upon the verification of the qualifying contribution forms by the appropriate county recorder. The county recorder shall disqualify any qualifying contribution forms that are:
  - 1. Unsigned by the contributor;
  - 2. Undated; or
  - 3. That the recorder is unable to verify as matching signature of a person who is registered to vote, on the date specified, inside the electoral district the candidate is seeking.
- E. The Secretary of State will notify the candidate and the Commission regarding the approval or denial of Clean Election funds. If the result of the random sample is from ninety percent to one hundred ten per cent of the slips needed to qualify for funding, a candidate who is denied clean elections funding after all of the slips are verified may be eligible to submit supplemental qualifying contribution forms for one additional opportunity to be approved for funding pursuant to subsection G of this rule.
- F. The amount equal to the sum of the qualifying contributions collected and tendered to the Secretary of State pursuant to A.R.S. § 16-950(B) will be deposited into the fund, and the

amount tendered will not be returned to a candidate if a candidate is denied clean campaign funding.

- G. In accordance with the procedure pursuant to A.R.S. § 16-950(C), if the Secretary of State determines that the result of the five percent random sample is from ninety percent to one hundred ten per cent of the slips needed to qualify for funding, then the Secretary of State shall send all of the slips for verification. If the county recorder has verified all of the candidate's signature slips and there is an insufficient number of valid qualifying contribution slips to qualify the candidate for funding, the candidate may make only one supplemental filing of additional qualifying contribution slips and qualifying contributions to the Secretary of State if all of the following apply:
  - 1. The candidate files at least the minimum number of additional slips needed to qualify for funding.
  - 2. The slips are not receipts for duplicate contributions from individuals who have previously contributed to that candidate.
  - 3. The period for filing qualifying contribution slips has not expired.
- H. The Secretary of State shall forward facsimiles of all of the supplemental qualifying contribution slips to the appropriate county recorders for the county of the contributors' addresses as shown on the contribution slips. The county recorder shall verify all of the supplemental slips within ten business days after receipt of the facsimiles and shall provide a report to the Secretary of State identifying as disqualified any slips that are unsigned by the contributor or undated or that the recorder is unable to verify as matching the signature of a person who is registered to vote, on the date specified on the slip, inside the electoral district of the office the candidate is seeking. On receipt of the report of the county recorder on all supplemental slips, the Secretary of State shall calculate the candidate's total number of valid qualifying contribution slips and shall approve or deny the candidate for funds.
- I. Pursuant to A.R.S. § 16-956(D), the Citizens Clean Elections Commission adopted the following rule changing the minimum number of qualifying contributions:

	Minimum Qualifying Contributions
Legislature	210
Mine Inspector	525
Corporation Commissioner	1,575
Superintendent of Public Instruction	1,575
Treasurer	1,575
Attorney General	2,625
Secretary of State	2,625
Governor	4,200

**R2-20-106. Distribution of funds to certified candidates**

- A. Before the initial disbursement of funds, the Commission shall review the candidate's funding application and all relevant facts and circumstances and:
  - 1. Verify that the number of signatures on the candidate's nominating petitions equals or exceeds the number required pursuant to A.R.S. § 16-322 as follows:
    - a. If the application is submitted before the March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions equals or exceeds 115 percent of the number required pursuant to A.R.S. § 16-322 based on the prior election voter registration list as determined by the Secretary of State; or
    - b. If the application is submitted after the current year March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions is equal to or greater than the number required pursuant to A.R.S. § 16-322.



2. Determine that the required number of qualifying contributions have been received and paid to the Secretary of State for deposit in the Fund; and
  3. Determine whether the candidate is opposed in the election.
- B. In making the reviews, verifications and determinations in subsection A, paragraph 3, the Commission shall consider all relevant facts and circumstances, and it shall not be bound by election formalities such as the filing of nominating petitions by others in determining whether an applicant is opposed. Among other evidence the Commission may consider is the existence of exploratory committees or filings made to organize campaign committees of opponents and other like indicia.
  - C. The Commission may review and affirm or change its determination that the candidate is or is not opposed until the ballot for the election is established.
  - D. Within 7 days after a primary election and before the Secretary of State completes the canvass, the Commission shall disburse funds for general election campaigns to the participating candidates who received the greatest number of votes at each primary election, provided that the candidate with the highest number of votes out of the total number of votes, has at least 2 percentage points greater than the candidate with the next highest votes based on the unofficial results as of that date. In a legislative race for the Arizona House of Representatives, the Commission shall disburse funds for general election campaigns to participating candidates with the highest or second highest number of votes cast, provided such candidate received votes totaling at least 2 percentage points, of the total ballots cast, larger than the vote total cast for the candidate with the 3<sup>rd</sup> highest vote total.
  - E. Promptly after the Secretary of State completes the canvass, the Commission shall disburse funds for general election campaigns to all eligible participating candidates to whom payment has not been made. If a participating candidate has received funds from the Commission pursuant to subsection D and the canvass or recount determines that the candidate is not eligible to appear on the general election ballot, the participating candidate shall return all unused funds to the fund within 10 days after such determination is made. That candidate shall make no promissory payments from the general election fund from the date of the canvass.
  - F. The Commission may refuse to distribute funds to participating candidates in cases of fraud or illegal activity committed by the participating candidate.

#### **R2-20-107. Candidate Debates**

- A. The Commission shall sponsor debates among statewide and legislative office candidates prior to the primary and general elections unless there is no participating candidate in the election for a particular office.
- B. In the primary election, the Commission shall sponsor primary election debates as follows:
  1. According to political party affiliation of candidates, recognized on the official ballot, where at least one of the candidates is a participating candidate, and
  2. Party primary candidates are opposed in the election for the political party's nomination.
- C. The following candidates will not be invited to participate in debates as follows:
  1. In the primary election, write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
  2. In the general election, write-in candidates.
- D. Pursuant to A.R.S. § 16-956(A)(2), all participating candidates certified pursuant to A.R.S. § 16-947 shall attend and participate in the debates sponsored by the Commission.
- E. Unless exempted, if a participating candidate fails to participate in any Commission-sponsored debate, the participating candidate shall be ineligible to receive any further equalizing funds for that election. For purposes of this section, each primary or general election shall be considered a separate election.

- F. A participating candidate may request to be exempt from participating in a required debate by doing the following:
  - 1. Submit a written request to the Commission at least one week prior to the scheduled debate; and
  - 2. State the reasons and circumstances justifying the request for exemption.
- G. After examining the request to be exempt, the Commission will exempt a candidate from participating in a debate if at least 3 Commissioners determine that the circumstances are:
  - 1. Beyond the control of the candidate;
  - 2. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or
  - 3. Good cause, as defined in A.R.S. § 16-918(E).
- H. A participating candidate who fails to participate in a required debate may submit a request for reconsideration to the Commission.
  - 1. The candidate's request for reconsideration shall:
    - a. State the reason the candidate failed to participate in the debate; and
    - b. Be submitted to the Commission no later than 5 business days after the date of the debate the candidate failed to attend.
  - 2. After examining the request for reconsideration, the Commission will excuse a candidate from the penalties imposed if at least 3 Commissioners determine that the circumstances were:
    - a. Beyond the control of the candidate;
    - b. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or
    - c. Good cause, as defined in A.R.S. § 16-918(E).
- I. When a participating candidate is unopposed in the candidate's party primary election, the candidate shall be exempt from participating in a Commission-sponsored debate for the primary election. When a participating candidate is unopposed in the general election, the candidate shall be exempt from participating in a Commission-sponsored debate for the general election.

**R2-20-108. Voluntary termination of participating candidate status**

- A. Voluntary termination of participating candidate status may only occur before the end of the qualifying period. To withdraw from participating candidate status, a candidate shall send a letter to the Commission stating the candidate's intent to withdraw and the reason for the withdrawal. The candidate shall not accept any private monies until the withdrawal is approved by the Commission. The Commission shall act on the withdrawal request within 7 days. If the Commission takes no action in the 7-day time period, the withdrawal is automatic and the candidate shall immediately begin the process of returning public funds to the Fund.
- B. A candidate, whose withdrawal has been approved by, or occurred by lack of action of the Commission, shall:
  - 1. No longer be eligible to receive public funding.
  - 2. Return all Clean Elections funds, spent and unspent, to the Fund within 30 calendar days after he or she ceases to be a participating candidate.
- C. A participating candidate who withdraws prior to submitting qualifying contributions and an application for funds to the Secretary of State shall use the candidate's best efforts to return all qualifying contributions collected to the contributors within 30 days of the candidate's withdrawal. If a contributor cannot be located, the qualifying contributions collected by the candidate shall be remitted to the Fund.

**R2-20-109. Reporting requirements**

- A. Reporting of transactions; Secretary of State's computer software. All campaign finance reports shall be filed in electronic format in accordance with A.R.S. 16-958(E). The

Commission shall coordinate with the Secretary of State to make electronic-filing computer software available to candidates. If a campaign finance report is specifically requested by a candidate, the Commission will deliver copies of campaign finance reports required under A.R.S. § 16-958. Otherwise, such campaign finance reports shall be available on the Secretary of State's web site. All candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account using the campaign finance computer software provided by the Secretary of State as follows:

1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. The Commission may treat such expenditure as though made during the general election period, and equalizing funds pursuant to A.R.S. § 16-952 shall be paid at the start of the general election period.
  2. Original and supplemental campaign finance reports filed pursuant to A.R.S. §§ 16-941 and -958 shall include the same information regarding receipts and disbursements as required by A.R.S. § 16-915.
- B. Participating candidate reporting requirements. In addition to the campaign finance reports filed pursuant to A.R.S. § 16-913, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:
1. Prior to filing the application for funding pursuant to A.R.S. § 16-950, participating candidates shall file a campaign finance report with the names of persons who have made qualifying contributions to the candidate. In the alternative, for the 2006 elections, candidates may file this campaign finance report in an electronic spreadsheet format approved by the Executive Director or his or her designee together with a hard copy printout of the report.
  2. End of qualifying period. At the end of the qualifying period, a participating candidate shall file a recap campaign finance report consisting of a recap of all early contributions received, including personal monies and the expenditures of such monies.
    - a. The recap campaign finance report for the qualifying period shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.
    - b. If the recap campaign finance report shows any amount unspent by a participating candidate, the candidate, within five days after filing the recap campaign finance report, shall send the Commission a check from the candidate's campaign account that will remit all unspent early contributions to the Fund, pursuant to A.R.S. § 16-945(B). Any unspent personal monies shall be returned to the candidate or the candidate's family member within 5 days.
  3. Primary election and general election recap campaign finance reports. Each participating candidate shall file a campaign finance report consisting of a recap of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made from such candidate's campaign fund to the Clean Elections Fund. If the recap campaign finance report shows any amount unspent by a participating candidate, the candidate, within five days after filing the recap campaign finance report, shall send the Commission a check from the candidate's campaign account that will return all unspent monies to the Fund.
    - a. The recap campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.
    - b. The recap campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3).

- C. Amending Reports. If a candidate determines that a previously filed campaign finance report contains inaccurate information, then the candidate shall amend the campaign finance report to provide accurate information.
  - 1. Except when a new election period has started, a participating candidate who received clean elections funding based upon an inaccurate campaign finance report shall remit to the Commission the excess funds as determined by the amended campaign finance report within five days after filing the amended campaign finance report.
  - 2. If the participating candidate does not have sufficient funds in his or her account to return the required monies, the balance owed shall be withheld from future matching funds due to the participating candidate in the election period during which the excess funds were awarded.
- D. Independent expenditures.
  - 1. Any individual, corporation, political party or membership organization that makes independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle that expressly advocate the election or defeat of a specific candidate, as defined in A.A.C. R2-20-101(10), shall file campaign finance reports with the Secretary of State in accordance with A.R.S. § 16-958.
  - 2. The person who fails to file a campaign finance report pursuant to this subsection shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B).
  - 3. In determining whether a communication shall be reported pursuant to A.R.S. §§ 16-941 (D) and -958, the Commission shall consider whether the communication expressly advocates the election or defeat of a clearly identified candidate and was not made in concert with a candidate. In determining that a communication expressly advocates the election or defeat of a candidate, rather than a communication that advocates in favor of or against an issue, the Commission will consider the following 3 components.
    - a. Even if it is not presented in the clearest, most explicit language, speech is “express” if its message is unmistakable, unambiguous, and suggestive of only one plausible meaning.
    - b. Speech may only be termed “advocacy” if it presents a clear plea for action, and thus speech that is merely informative is not covered by the Act.
    - c. It must be clear what action is advocated. Speech cannot be “express advocacy of the election or defeat of a clearly identified candidate” when reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action. If any reasonable alternative reading of speech can be suggested, it cannot be express advocacy subject to the Act’s disclosure requirements.
- E. The following will be considered to be a “contribution during the election cycle to date” or “expenditures... made through the end of the primary election period” for purposes of reporting under A.R.S. §§ 16-941(B)(2) and 16-958(A):
  - 1. A contribution to a candidate to retire debt from a prior election cycle if deposited into the current campaign account;
  - 2. Any contributions received and placed in a future, current, or prior campaign account during the current election cycle;
  - 3. Surplus funds transferred into the current campaign account;
  - 4. Contributions received or expenditures made beginning 21 days after the date of the prior general election.

## **R2-20-110. Campaign accounts**

- A. During an election cycle, each participating and nonparticipating candidate shall conduct all campaign financial activities through a single, current election campaign account and any petty cash accounts as are permitted by law.

- B. If a nonparticipating candidate conducts campaign financial activities for the current election cycle through more than one account, the Commission will consider all campaign financial activities for purposes of equalizing funds.
- C. A candidate may maintain a campaign account other than the campaign account described in subsection A if the other campaign account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.
- D. During the exploratory period, a candidate may receive debt-retirement contributions for a campaign during a prior election cycle if the funds are deposited in the account for that prior campaign. A candidate shall not deposit debt-retirement contributions into current campaign accounts.

**R2-20-111. Books and records requirements**

- A. All candidates shall maintain at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.
- B. All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:
  - 1. The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all the following:
    - a. All contributions or other monies received by or on behalf of the candidate.
    - b. The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into a campaign account.
    - c. Cumulative totals contributed by each individual or political committee.
    - d. The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.
    - e. All periodic bank statements or other statements for the campaign account.
    - f. All activity related to petty cash accounts.
  - 2. No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his designated agent.
  - 3. Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.
  - 4. All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.
  - 5. The treasurer shall preserve all records set forth in subsection B and copies of all finance reports required to be filed for 3 years after the filing of the finance report covering the receipts and disbursements evidenced by the records.
  - 6. If requested by the Attorney General, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this rule.
- C. Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the Commission, 10 or more days before the proposed date of the inspection. If the request is made within 2 weeks before the primary or general election, the request shall be delivered at least 2 days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.
  - 1. The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the

Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a 2 hour time period.

2. The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request and fees.
3. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.
4. If a person who requests to inspect a candidate's records under A.R.S. § 16-958 (F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956 (C) for the production of any books, papers, records or other items sought in the public inspection request. The subpoena shall order the candidate to produce:
  - a. All papers, records, or other items sought in the public inspection request;
  - b. No later than 2 business days after the date of the subpoena; and
  - c. To the Commission's office during regular business hours.
5. Any person who believes that a candidate or a candidate's campaign committee has not complied with this section may appeal to Superior Court.

#### **R2-20-112. Reserved**

#### **R2-20-113. Calculation of Matching Funds**

- A. During the primary election period, the Commission shall pay any participating candidate in the same party primary of a nonparticipating candidate, the amount of the nonparticipating candidate's expenditures in excess of the amount over the primary election spending limit, not to exceed 3 times the original primary election spending limit, as follows:
  1. The nonparticipating candidates' expenditures, which are defined as:
    - a. Any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made by a person for the purpose of influencing an election in this state;
    - b. A promise or agreement to make an expenditure resulting in an extension of credit; and
    - c. The value of any in-kind contribution received.
  2. If an independent expenditure is made against a participating candidate, the participating candidate will be eligible to receive matching funds, if applicable, for the amount of the independent expenditure. The participating candidate who was the subject of the expenditure will be the only candidate eligible to receive the matching funds, if applicable, for the cost of that expenditure.
  3. If an independent expenditure is made in favor of one or more nonparticipating candidates, all participating candidates in the party primary of the candidate favored by the expenditure will be eligible to receive matching funds, if applicable, for the amount of the independent expenditure.
  4. If an independent expenditure is made in favor of a participating candidate, all of the other participating candidates in that party primary will be eligible to receive matching funds, if applicable, for the cost of that expenditure.
- B. During the general election period, a participating candidate will receive matching funds when the opposing nonparticipating candidate has received in contributions to date, less the amount of expenditures the nonparticipating candidate made through the end of the primary election period, an amount that exceeds the general election spending limit. The Commission shall pay any participating candidate seeking the same office an amount equal to any excess over the general election spending limit, not to exceed 3 times the original general election spending limit, as follows:
  1. The nonparticipating candidate's contributions include:

- a. Surplus funds transferred from previous campaign accounts and deposited into the current campaign account;
  - b. Individual contributions;
  - c. \$25 or less contributions;
  - d. In-kind contributions;
  - e. Political committee contributions;
  - f. Personal monies;
  - g. Candidate or family loans; and
  - h. Other loans.
- 2. In accordance with A.R.S. § 16-952, the nonparticipating candidate's contributions shall not include offsets to contributions, including a refund of a contribution to an individual contributor or to a political committee contributor.
- 3. In accordance with A.R.S. § 16-952(C)(4), when a participating candidate is opposed in the general election by an independent candidate or nonparticipating candidate who was unopposed in the party primary, expenditures made during the primary election period by the nonparticipating candidate or independent candidate will not be included in the calculation of matching funds.
- 4. If an independent expenditure is made against a participating candidate, the participating candidate will be eligible to receive matching funds, if applicable, for the amount of the independent expenditure. The participating candidate who was the subject of the expenditure will be the only candidate eligible to receive the matching funds, if applicable, for the cost of that expenditure.
- 5. If an independent expenditure is made in favor of one or more nonparticipating candidates, all participating candidates in the election for that same office will be eligible to receive matching funds, if applicable, for the amount of the independent expenditure.
- 6. If an independent expenditure is made in favor of a participating candidate, all of the other participating candidates in the election for that office will be eligible to receive the matching funds, if applicable, for the cost of that expenditure.
- C. Independent expenditures made against a nonparticipating candidate during the primary or general election periods will not be considered in the calculation of matching funds for a participating candidate.
- D. The Commission shall cease to disburse matching funds for an election period after the Wednesday following the primary or general election day.

History Note:

- Some of the rules in Article 1 were amended and proposed by the Commission at a public meeting on May 31, 2001. The sixty-day public comment period began on June 1, 2001 and ended on July 30, 2001. The Commission adopted the amendments during its August 21, 2001 meeting to the following rules: A.A.C. R2-20-104(D), (I) & (J), R2-20-105(C) & (F), R2-20-109(C) & (D), R2-20-111(H), and R2-20-112.
- A.A.C. R2-20-104 (C) & (G) was proposed by the Commission at a public meeting on January 29, 2002. The sixty-day public comment period began on January 30, and ended on March 31, 2002. The Commission adopted the amendments during its April 2, 2002 meeting.
- A.A.C. R2-20-105 (D-H) was proposed at a Commission meeting on February 19, 2002. The sixty-day public comment period began on February 20, 2002 and ended April 22, 2002. The Commission adopted the amendments during its April 30, 2002 meeting.
- A.A.C. R2-20-105(I) was proposed by the Commission at a public meeting on December 10, 2002. The sixty-day public comment period began December 11, 2002 and ended February 28, 2003. The Commission adopted the amendments during its March 25, 2003 meeting.
- Some of the rules in Article 1 were amended and proposed by the Commission at a public meeting on November 18, 2003. Sixty-day public comment period began on November 19, 2003 and ended on January 20, 2004. The Commission adopted the amendments during its January 28, 2004 meeting to the following rules: A.A.C. R2-20-101(2),(4),(9),(15)&(18); R2-20-103(A),(C),(D),(E),(F)&(G); R2-20-104; R2-20-107(A),(B),(C),(E),(F),(G),(H)&(I); R2-20-109; R2-20-111; R2-20-112 (Rule struck in its entirety); R2-20-113 (new rule).
- Some of the rules in Article 1 were amended and proposed by the Commission at a public meeting on January 28, 2004. Sixty-day public comment period began on January 29, 2004 and ended on March 29, 2004. The Commission adopted the amendments during its March 30, 2004 meeting to the following rules: A.A.C. R2-20-101(2),(4),(13),(16)&(19); R2-20-103(G); R2-20-104(B),(F)&(I); R2-20-109(B)&(C); R2-20-111(B); R2-20-113(A)&(B).
- Amendments to A.A.C. R2-20-109(B)(1) were proposed at a public meeting on August 25, 2005. The sixty day public comment period began on August 26, 2005 and ended on October 25, 2005. At the November 3, 2005 meeting, the Commission considered public comments and adopted the final amendment.



## **Article 2. Compliance and Enforcement Procedures**

### **R2-20-201. Scope**

These rules provide procedures for processing possible violations of the Citizens Clean Elections Act.

### **R2-20-202. Initiation of compliance matters**

Compliance matters may be initiated by a complaint or on the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities.

### **R2-20-203. Complaints**

- A. Any person who believes that a violation of any statute or rule over which the Commission has jurisdiction has occurred or is about to occur may file a complaint in writing to the Executive Director.
- B. A complaint shall conform to the following:
  - 1. Provide the full name and address of the complainant; and
  - 2. Contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.
- C. All statements made in a complaint are subject to the statutes governing perjury. The complaint shall differentiate between statements based upon personal knowledge and statements based upon information and belief.
- D. The complaint shall conform to the following provisions:
  - 1. Clearly identify as a respondent each person or entity who is alleged to have committed a violation;
  - 2. Statements which are not based upon personal knowledge shall be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements;
  - 3. Contain a clear and concise recitation of the facts which describe a violation of a statute or rule over which the Commission has jurisdiction; and
  - 4. Be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

### **R2-20-204. Initial complaint processing; notification**

- A. Upon receipt of a complaint, the Executive Director shall review the complaint for substantial compliance with the technical requirements of A.A.C. R2-20-203, and, if it complies with those requirements, shall within 5 days after receipt of the complaint notify each respondent that the complaint has been filed, advise each respondent of Commission compliance procedures, and mail each respondent a copy of the complaint.
- B. If a complaint does not comply with the requirements of A.A.C. R2-20-203, the Executive Director shall so notify the complainant and any person or entity identified therein as respondent, within the 5 day period specified in subsection A, that no action should be taken on the basis of that complaint. A copy of the complaint shall be mailed with the notification to each respondent.

### **R2-20-205. Opportunity for no action on complaint-generated matters**

- A. A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within 5 days from receipt of a written copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.
- B. The Commission shall not take any action, or make any finding, against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been served upon the Commission within the 5 day period specified in subsection A.

- C. The respondent's response shall be notarized. The respondent's failure to respond in accordance with subsection A within 5 days of receiving the written copy of the complaint may be viewed as an admission to the allegations made in the complaint for purposes of the reason to believe finding pursuant to A.A.C. R2-20-206.

**R2-20-206. Executive Director's recommendation on complaint-generated matters**

- A. Following either the expiration of the 5 day period specified by A.A.C. R2-20-205 or the receipt of a response as specified by A.A.C. R2-20-205(A), whichever occurs first:
  - 1. The Executive Director may recommend to the Commission whether it should find reason to believe that a respondent has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction or
  - 2. The Executive Director may recommend that the Commission find that there is no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of A.A.C. R2-20-205(A).
- B. Neither the complainant nor the respondent has the right to appeal the Executive Director's recommendation made pursuant to subsection A because the recommendation is not a final administrative action.

**R2-20-207. Internally generated matters; referrals**

- A. On the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities, or on the basis of a referral from an agency of the state, the Executive Director may recommend in writing that the Commission find reason to believe that a person or entity has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction.
- B. If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur, the Executive Director shall notify the respondent of the Commission's decision and shall include a copy of a staff report setting forth the legal basis and the alleged facts which support the Commission's action.

**R2-20-208. Complaint processing; notification**

- A. If the Commission, either after reviewing a complaint-generated recommendation as described in A.A.C. R2-20-206 and any response of a respondent submitted pursuant to A.A.C. R2-20-205, or after reviewing an internally generated recommendation as described in A.A.C. R2-20-207, determines by an affirmative vote of at least 3 of its members that it has reason to believe a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding, setting forth the sections of the statute or rule alleged to have been violated and the alleged factual basis supporting the finding. In accordance with A.R.S. § 16-957(A), the Commission shall serve on the respondent an order requiring compliance within 14 days. During that period, the respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission.
- B. If the Commission finds no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings, the Executive Director shall so notify both the complainant and respondent.
- C. The complainant may bring an action in Superior Court in accordance with A.R.S. § 16-957(C) if the Commission finds there is no reason to believe a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings.

**R2-20-209. Investigation**

- A. The Commission shall conduct an investigation in any case in which the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B. The Commission's investigation may include, but is not limited to, field investigations, audits, and other methods of information gathering.

**R2-20-210. Written questions under order**

The Commission may issue an order requiring any person to submit sworn, written answers to written questions, and may specify a date by which such written answers must be submitted to the Commission.

**R2-20-211. Subpoenas and subpoenas duces tecum; depositions**

- A. The Commission may authorize its Executive Director or Assistant Attorney General to issue subpoenas requiring the attendance and testimony of any person by deposition, and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with a deposition or otherwise.
- B. If the Commission orders oral testimony to be taken by deposition or for documents to be produced, the subpoena shall so state and advise the deponent or person subpoenaed that all testimony will be under oath. The Commission may authorize its Executive Director to take a deposition and have the power to administer oaths.
- C. The deponent shall have the opportunity to review and sign depositions taken pursuant to this rule.

**R2-20-212. Reserved****R2-20-213. Motions to quash or modify a subpoena**

- A. Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but no more than 5 days after the date of receipt of such subpoena, apply to the Commission to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefore.
- B. The Commission may deny the application, quash the subpoena or modify the subpoena.
- C. The person subpoenaed and the Executive Director may agree to change the date, time, or place of a deposition or for the production of documents without affecting the force and effect of the subpoena, and such agreements shall be confirmed in writing.

**R2-20-214. The probable cause to believe recommendation; briefing procedures**

- A. Upon completion of the investigation conducted pursuant to A.A.C. R2-20-209, the Executive Director shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B. The Executive Director shall notify each respondent of the recommendation and enclose a copy of his or her brief.
- C. Within 5 days from receipt of the Executive Director's brief, the respondent may file a brief with the Commission setting forth the respondent's position on the factual and legal issues of the case.
- D. After reviewing the respondent's brief, the Executive Director shall promptly advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

**R2-20-215. The probable cause to believe finding; notification**

- A. If the Commission, after having found reason to believe and after following the procedures set forth in A.A.C. R2-20-214, determines by an affirmative vote of at least 3 of its members

that there is probable cause to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall authorize the Executive Director to so notify the respondent by an order, that states the nature of the violation, pursuant to A.R.S. § 16-957(A).

- B. If the Commission finds no probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise orders a termination of Commission proceedings, it shall authorize the Executive Director to notify both respondent and complainant by letter that the proceeding has ended. The Executive Director's letter also will inform the parties that the Commission is not precluded from taking action on this matter in the future if evidence is discovered which may alter the decision of the Commission.
- C. If the Commission makes a finding that the respondent has violated a statute or rule over which the Commission has jurisdiction pursuant to subsection A of this rule, the respondent will be notified of his or her right to appeal the decision pursuant to the Arizona Administrative Procedures Act, A.R.S. § 41-1092.

#### **R2-20-216. Conciliation**

- A. Upon a Commission finding of probable cause to believe that the respondent has violated a statute or rule over which the Commission has jurisdiction, the Executive Director shall attempt to settle the matter as authorized by A.R.S. § 16-957(A) by informal methods of administrative settlement or conciliation, and shall attempt to reach a tentative conciliation agreement with the respondent.
- B. A conciliation agreement pursuant to subsection A of this section is not binding upon either party unless and until it is signed by the respondent and by the Executive Director upon approval by the affirmative vote of at least 3 members of the Commission.
- C. If a conciliation agreement is reached between the Commission and the respondent, the Executive Director shall send a copy of the signed agreement to both complainant and respondent.

#### **R2-20-217. Enforcement proceedings**

- A. Upon a finding of probable cause that the alleged violator remains out of compliance, the Executive Director may recommend to the Commission that the Commission authorize the issuance of an order and assess civil penalties pursuant to A.R.S. § 16-957(B).
- B. The Commission may, by an affirmative vote of at least 3 of its members, authorize the Executive Director to issue an order and assess civil penalties pursuant to A.R.S. § 16-957(B).
- C. Subsections A and B of this rule shall not preclude the Commission, upon request of a respondent, from entering into a conciliation agreement pursuant to A.A.C. R2-20-216 even after the Commission authorizes the Executive Director to issue an order and assess civil penalties pursuant to subsection B of this rule. Any conciliation agreement reached under this subsection is subject to the provisions of A.A.C. R2-20-216(B) and shall have the same force and effect as a conciliation agreement reached under A.A.C. R2-20-216(D).

#### **R2-20-218. Reserved**

#### **R2-20-219. Reserved**

#### **R2-20-220. Ex parte communications**

- A. In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to its compliance procedures, except to the extent required for the disposition of ex parte matters as required by law (for example, during the normal course of an investigation or a conciliation effort), no interested person outside the agency shall make or cause to be made to any Commissioner or any member of the Commission's staff any ex parte communication relative to the factual or

legal merits of any enforcement action, nor shall any Commissioner or member of the Commission's staff make or entertain any such ex parte communications.

- B. This rule shall apply from the time a complaint is filed with the Commission or from the time that the Commission determines on the basis of information ascertained in the normal course of its statutory responsibilities that it has reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or may occur, and remains in force until the Commission has finally concluded all action with respect to the matter in question.
- C. Nothing in this section shall be construed to prohibit contact between a respondent or respondent's attorney and any attorney or the Executive Director or the Assistant Attorney General in the course of representing the Commission or the respondent with respect to an enforcement proceeding or civil action. No statement made by a Commission attorney or staff member shall bind or estop the Commission.

**R2-20-221. Representation by counsel; notification**

- A. If a respondent wishes to be represented by counsel with regard to any matter pending before the Commission, respondent shall so advise the Commission by sending a letter of representation signed by the respondent stating the following:
  - 1. The name, address, and telephone number of the counsel; and
  - 2. A statement authorizing such counsel to receive any and all notifications and other communications from the Commission on behalf of respondent.
- B. Upon receipt of a letter of representation, the Commission shall have no contact with respondent except through the designated counsel unless authorized in writing by respondent. The Commission will send a copy of this letter to the respondent's attorney.

**R2-20-222. Civil penalties**

A civil penalty negotiated by the Commission or imposed by a court for a violation of the Act shall not exceed the greater of \$10,000 or an amount equal to any contribution or expenditure involved in the violation. In the case of a knowing and willful violation, the civil penalty shall not exceed the greater of \$15,000 or an amount equal to 200 percent of any contribution or expenditure involved in the violation.

**R2-20-223. Notice of appealable agency action**

If the Commission makes a probable cause finding pursuant to A.A.C. R2-20-215 or decides to initiate an enforcement proceeding pursuant to A.A.C. R2-20-217, the Assistant Attorney General (AAG) shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:

- A. The statute or rule violated;
- B. A description of the respondent's right to request a hearing and to request an informal settlement conference; and
- C. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

**R2-20-224. Request for an administrative hearing**

- A. The respondent must file a request for a hearing with the Commission within 30 days of receipt of the notice prescribed in A.A.C. R2-20-223.
- B. If the respondent requests a hearing, the AAG shall notify the Office of Administrative Hearings (OAH) of the appeal and shall coordinate a hearing date with the Commission's AAG and Commission staff that may be called as witnesses and OAH. The hearing must be held within 60 days after the notice of appeal is filed with the Commission.
- C. The AAG shall prepare and serve a notice of hearing on all parties to the appeal at least 30 days before the hearing date, unless an expedited hearing is requested and granted. The notice of hearing shall be drafted in accordance with A.R.S. § 41-1092.05(D).

**R2-20-225. Informal settlement conference**

- A. If the respondent requests an informal settlement conference, the informal settlement conference shall be held within 15 days after the Commission receives the request. A request for an informal settlement conference shall be in writing and must be filed with the Commission no later than 20 days before the hearing date. A person with the authority to act on behalf of the Commission must represent the Commission at the conference. The AAG shall attend the settlement conference, but shall not be the individual authorized to act on behalf of the Commission.
- B. The Commission representative shall notify the respondent in writing that the statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations, are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference waive their right to object to the participation of the agency representative in the final administrative decision.

**R2-20-226. Administrative hearing**

- A. If the matter continues to a hearing, the hearing shall be held in accordance with A.R.S. § 41-1092.07. The Administrative Law Judge (ALJ) must issue a written recommended decision within 20 days after the hearing is concluded.
- B. If the enforcement action occurs within 6 months of the primary or general election, the Commission will request an expedited review of the matter.

**R2-20-227. Review of administrative decision by Commission**

- A. Within 30 days after the date OAH sends a copy of the ALJ's decision to the Commission, the Commission may review the ALJ's decision and accept, reject or modify the decision.
- B. If the Commission declines to review the ALJ's decision, the Commission shall serve a copy of the decision on all parties. If the Commission modifies or rejects the decision, the Commission shall file with OAH and serve on all parties a copy of the ALJ's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification. If the Commission accepts, rejects or modifies the decision, the Commission's decision will be certified as final.
- C. If the Commission does not accept, reject or modify the decision within 30 days after OAH sends the ALJ's decision to the Commission, the ALJ's decision will be certified as final.

**R2-20-228. Judicial review**

A party to the administrative proceeding may appeal a final administrative decision pursuant to A.R.S. § 12-901 et. seq. (Judicial Review of Administrative Decisions). A party does not have the right to judicial review unless that party first exhausts its administrative remedies by going through the above steps. After a hearing has been held and a final administrative decision has been entered pursuant to A.R.S. § 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

**R2-20-229. Reserved****R2-20-230. Reserved****R2-20-231. Reserved****History Note:**

- Some of the rules in Article 2 were amended and proposed by the Commission at a public meeting on March 19, 2002. The sixty-day public comment period began on March 20, 2002

and ended on May 20, 2002. The Commission adopted the changes to Article 2 during its May 21, 2002 public meeting.

- Some of the rules in Article 2 were amended and proposed by the Commission at a public meeting on November 18, 2003. The sixty-day comment period began on November 19, 2003 and ended on January 20, 2004. The Commission adopted the amendments during its January 28, 2004 meeting to the following rules: A.A.C. R2-20-203(A)&(C); R2-20-205; R2-20-206; R2-20-208(A) & (B); R2-20-212 (Rule moved to R2-20-103(F-G)); R2-20-214(C); R2-20-217(B); R2-20-218 (rule struck in its entirety); R2-20-223; R2-20-229 (Rule moved to R2-20-107); R2-20-230 (Rule moved to R2-20-107)

### **Article 3. Standard of Conduct for Commissioners and Employees**

#### **R2-20-301. Purpose and applicability**

- A. The Commission is committed to implementing the Act in an honest, independent and impartial fashion and to seeking to uphold public confidence in the integrity of the electoral system. To ensure public trust in the fairness and integrity of the Arizona elections process, all Commissioners and employees must observe the highest standards of conduct. This Article prescribes standards of ethical conduct for Commissioners and employees of the Commission relating to conflicts of interest arising from outside employment, private businesses, professional activities, political activities, and financial interests. The avoidance of misconduct and conflicts of interest on the part of the Commissioners and the employees through informed judgment is indispensable to the maintenance of these prescribed ethical standards. Attainment of these goals necessitates strict and absolute fairness and impartiality in the administration of the law.
- B. This Article applies to all persons included within the terms “employee” and “Commissioner” of the Commission.
- C. These Standards of Conduct shall be construed in accordance with any applicable laws, regulations and agreements between the Commission and a labor organization.
- D. Pursuant to A.R.S. § 16-955(I), for three years after a Commissioner completes his or her tenure, Commissioners shall not seek or hold any public office, serve as an officer of any political committee, or employ or be employed as a lobbyist.

#### **R2-20-302. Definitions**

- 1. “Commission” means the Citizens Clean Elections Commission of Arizona.
- 2. “Commissioner” means a voting member of the Commission, appointed pursuant to A.R.S. § 16-955.
- 3. “Conflict of interest” means a situation in which a Commissioner’s or an employee’s private interest is or appears to be inconsistent with the efficient and impartial conduct of his or her official duties and responsibilities.
- 4. “Employee” means an employee or staff member of the Commission.
- 5. “Former employee” means one who was, and is no longer, an employee of the Commission.
- 6. “Official responsibility” means the direct administrative or operating authority, whether intermediate or final, to approve, disapprove, or otherwise direct Commission action. Official responsibility may be exercised alone or with others and either personally or through subordinates.
- 7. “Outside employment” or “outside activity” means any work, service or other activity performed by a Commissioner or employee other than in the performance of the Commissioner’s or employee’s official employment duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting, self-employment, and other services or work performed, with or without compensation.
- 8. “Person” means an individual, corporation, company, association, firm, partnership, society, joint stock company, political committee, or other group, organization, or institution.

#### **R2-20-303. Notification to Commissioners and employees**

- A. The provisions of this Article shall be brought to the attention of, and made available to, each Commissioner and employee by furnishing a copy at the time of final publication. The provisions of this Article shall further be brought to the attention of such Commissioners and employees at least annually thereafter.
- B. The provisions of this Article shall be brought to the attention of each new Commissioner and new employee by furnishing a copy at the time of entrance of duty, and by such other methods of information and education as the Commission may prescribe.



**R2-20-304. Interpretation and advisory service**

Commissioners or employees seeking advice and guidance on questions of conflict of interest and on other matters covered by this Article should consult with the Commission's Chair or Executive Director. The Commission's Chair or Executive Director should be consulted prior to the undertaking of any action that might violate this Article governing the conduct of Commissioners or employees.

**R2-20-305. Reporting suspected violations**

- A. Commissioners and employees who have information, which causes them to believe that there has been a violation of a statute or a rule set forth in this Article, shall report promptly, in writing, such incident to the Commission's Chair or Executive Director.
- B. When information available to the Commission indicates a conflict between the interests of a Commissioner or employee and the performance of his or her Commission duties, the Commissioner or employee shall be provided an opportunity to explain the conflict or appearance of conflict in writing.

**R2-20-306. Disciplinary and other remedial action**

- A. A violation of this Article by an employee may be cause for disciplinary action, which may be in addition to any penalty prescribed by law.
- B. When the Commission's Executive Director determines that an employee may have or appears to have a conflict of interest, the Commission's Executive Director may question the employee in the matter and gather other information. The Commission's Executive Director and the employee's supervisor shall discuss with the employee possible ways of eliminating the conflict or appearance of conflict. If the Commission's Executive Director, after consultation with the employee's supervisor, concludes that remedial action should be taken, he or she shall refer a statement to the Commission containing his or her recommendation for such action. The Commission, after consideration of the employee's explanation and the results of any investigation, may direct appropriate remedial action as it deems necessary.
- C. Remedial action pursuant to subsection B of this rule may include, but is not limited to:
  - 1. Changes in assigned duties;
  - 2. Divestment by the employee of his or her conflicting interest;
  - 3. Disqualification for particular action; or
  - 4. Disciplinary action.

**R2-20-307. General prohibited conduct**

- A. A Commissioner or employee shall avoid any action whether or not specifically prohibited by this rule that might result in, or create the appearance of:
  - 1. Using public office for unlawful private gain;
  - 2. Giving favorable or unfavorable treatment to any person or organization due to any partisan or political consideration;
  - 3. Impeding Commission efficiency or economy;
  - 4. Losing impartiality;
  - 5. Making a Commission decision without Commission approval; or
  - 6. Adversely affecting the confidence of the public in the integrity of the Commission.
- B. A Commissioner or employee of the Commission shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:
  - 1. Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;
  - 2. Conducts operations or activities that are regulated or examined by the Commission; or
  - 3. Has an interest that may be substantially affected by the performance or nonperformance of the Commissioner or employee's official duty.
- C. Subsection B of this rule shall not apply:

1. When circumstances make it clear that obvious family or personal relationships, rather than the business of the persons concerned, are the motivating factors;
  2. To the acceptance of food, refreshments, and accompanying entertainment of nominal value in the ordinary course of a social occasion or a luncheon or dinner meeting or other function where a Commissioner or an employee is properly in attendance;
  3. To the acceptance of unsolicited advertising or promotional material or other items of nominal value such as pens, pencils, note pads, calendars; and
  4. To the acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities, such as home mortgage loans.
- D. A Commissioner or an employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself. However, this subsection does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as birthday, holiday, marriage, illness, or retirement.
- E. This rule does not preclude a Commissioner or employee from receipt of reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this Article for which no state payment or reimbursement is made. However, this rule does not allow a Commissioner or employee to be reimbursed, or payment to be made on his or her behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow a Commissioner or employee to be reimbursed by a person for travel on official business under Commission orders when reimbursement is prescribed by statute.

**R2-20-308. Outside employment or activities**

- A. A Commissioner or employee shall not engage in outside employment that is incompatible with the full discharge of his or her duties as a Commissioner or employee.
- B. Incompatible outside employment or other activities by Commissioners or employees include, but are not limited to:
1. Outside employment or other activities that involve illegal activities;
  2. Outside employment or other activities that would give rise to a real or apparent conflict of interest situation even though no violation of a specific statutory provision was involved;
  3. Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances where acceptance may result in, or create the appearance of, a conflict of interest;
  4. Outside employment or other activities that might bring discredit upon the state or Commission;
  5. Outside employment or other activities that establish relationships or property interests that may result in a conflict between the Commissioner's or the employee's private interests and official duties;
  6. Outside employment or other activities which would involve any contractor or subcontractor connected with any work performed for the Commission or would involve any person or organization in a position to gain advantage in its dealings with the state through the Commissioner's or employee's exercise of his or her official duties;
  7. Outside employment or other activities that may be construed by the public to be the official acts of the Commission. In any permissible outside employment, care shall be taken to ensure that names and titles of Commissioners and employees are not used to give the impression that the activity is officially endorsed or approved by the Commission or is part of the Commission's activities;
  8. Outside employment or other activities which would involve use by a Commissioner or employee of his or her official duty time; use of official facilities, including office space, machines, or supplies, at any time; or use of the services of other employees during their official duty hours;

9. Outside employment or other activities which impair the Commissioner's or employee's mental or physical capacities to perform Commission duties and responsibilities in an acceptable manner; or
  10. Use of information obtained as a result of state employment that is not freely available to the general public or would not be made available upon request. However, written authorization for the use of any such information may be given when the Commission determines that such use would be in the public interest.
- C. Commissioners and employees shall not receive any salary or anything of monetary value from a private source as compensation for the Commissioner's or employee's services to the state.
  - D. Commissioners and employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law or this Article. However, Commissioners and employees shall not, either with or without compensation, engage in teaching or writing that is dependent on information obtained as a result of his or her Commission employment, except when that information has been made available to the public or will be made available on request, or when the Commission gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.
  - E. This rule does not preclude a Commissioner or employee from participating in the activities of or acceptance of an award for meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit, educational, recreational, public service or civic organization.
  - F. An employee who intends to engage in outside employment shall obtain the approval of the Executive Director. The request shall include the name of the person, group, or organization for whom the work is to be performed, the nature of the services to be rendered, the proposed hours of work, or approximate dates of employment, and the employee's certification as to whether the outside employment (including teaching, writing or lecturing) will depend in any way on information obtained as a result of the employee's official position. The employee will receive, from the Executive Director, written notice of approval or disapproval of any written request. A record of the decision shall be placed in each employee's official personnel folder.

**R2-20-309. Financial interests**

- A. Commissioners and employees shall not engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through the Commissioner's or employee's duties or employment.
- B. Commissioners and employees shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the Commissioner's or employee's official duties and responsibilities, except in cases where the Commissioner or employee makes full disclosure, and disqualifies himself or herself from participating in any decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or in any proceeding of the Commission in which the financial interest is or appears to be affected. Full disclosure by a Commissioner or employee will require that individual to submit a written statement to the Executive Director or Chair disclosing the particular financial interest which conflicts substantially, or appears to conflict substantially, with the Commissioner's or employee's duties and responsibilities.
- C. Commissioners and employees shall disqualify themselves from a proceeding in which the Commissioner's or employee's impartiality might reasonably be questioned, such as in a situation where the Commissioner or employee knows that he or she, or his or her family member, has an interest in the subject matter in controversy or is a party to the proceeding, or has any other interest that could be substantially affected by the outcome of the proceeding.
- D. This rule does not preclude a Commissioner or employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Commission, as long as the Commissioner's or employee's financial interest does not conflict with official Commission duties.

**R2-20-310. Political and organization activity**

- A. Due to the Commission's role in the political process, the following restrictions on political activities are required:
1. Commissioners and employees shall not advocate for the election or defeat of a candidate, nor make contributions to a candidate, political party, or political committee subject to the jurisdiction of the Commission. Commissioners and employees, however, are not prohibited from signing candidate nomination petitions;
  2. Commissioners and employees shall not provide volunteer or paid services for a candidate, political party or political committee subject to the jurisdiction of the Commission; and
  3. Commissioners and employees shall not display partisan buttons, badges or other insignia on Commission premises.
- B. Employees on leave, leave without pay, or on furlough or terminal leave, even though the employees' resignations have been accepted, are subject to the restrictions of this rule. A separated employee who has received a lump-sum payment for annual leave, however, is not subject to the restrictions during the period covered by the lump-sum payment or thereafter, provided he or she does not return to state employment during that period. An employee is not permitted to take a leave of absence to work with a political candidate, committee, or organization or become a candidate for office despite any understanding that he or she will resign his or her position if nominated or elected.
- C. A Commissioner or employee is accountable for political activity by another person acting as his or her agent or under the Commissioner's or employee's direction or control if the Commissioner or employee is thus accomplishing what he or she may not lawfully do directly and openly.

**R2-20-311. Membership in associations**

Commissioners or employees who are members of nongovernmental associations or organizations shall avoid activities on behalf of those associations or organizations that are incompatible with their official positions.

**R2-20-312. Use of state property**

A Commissioner or employee shall not directly or indirectly use, or allow the use of, state property of any kind, including property leased to the state, for other than officially approved activities. Commissioners and employees have a positive duty to protect and conserve state property including equipment, supplies, and other property entrusted or issued to him or her.

## **Article 4. Audits**

### **R2-20-401. Purpose and scope**

This article prescribes procedures for conducting examinations and audits of participating and nonparticipating candidates' campaign finances.

### **R2-20-402. General**

The Commission may conduct an examination and audit of the receipts, disbursements, debts and obligations of each candidate. In addition, the Commission may conduct other examinations and audits as it deems necessary to carry out the provisions of the Act and regulations. Information obtained pursuant to any audit and examination may be used by the Commission as the basis, or partial basis, for its repayment determinations.<sup>8</sup>

### **R2-20-403. Conduct of fieldwork**

- A. The Commission will provide the candidate 2 days notice of the Commission's intention to commence fieldwork on the audit and examination. The Commission will conduct fieldwork at a site provided by the candidate. During or after fieldwork, the Commission may request additional or updated information, which expands the coverage dates of information previously provided. During or after fieldwork, the Commission may also request additional information that was created by or becomes available to the candidate that is of assistance in the Commission's audit. The candidate shall produce the additional or updated information no later than 2 days after service of the Commission's request.
- B. On the date scheduled for the commencement of fieldwork, the candidate shall facilitate the examination or audit by making records available in one central location, such as the Commission's office space, or shall provide the Commission with office space and records. The candidate shall be present at the site of the fieldwork. The candidate shall be familiar with the candidate's records and shall be available to the Commission to answer questions and to aid in locating records.<sup>9</sup>
- C. If the candidate fails to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention to enforce the request or assess other penalties.
- D. If, in the course of the examination or audit process, a dispute arises over the documentation sought, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within 5 days after the disputed Commission request is made, describing the dispute and indicating the candidate's proposed alternatives.

### **R2-20-404. Preliminary audit report**

- A. After the completion of fieldwork, the Commission may prepare a written preliminary audit report, which will be provided to the candidate after it is approved by an affirmative vote of at least 3 members of the Commission. The preliminary audit report may include:
  - 1. An evaluation of procedures and systems employed by the candidate to comply with applicable provisions of the Act and Commission rules;
  - 2. The accuracy of statements and campaign finance reports filed with the Secretary of State by the candidate; and
  - 3. Preliminary findings.
- B. The candidate may submit in writing within 10 days after receipt of the preliminary audit report, legal and factual materials disputing or commenting on the proposed findings

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<sup>8</sup> For computation of time, refer to A.A.C. R2-20-103.

<sup>9</sup> The candidate and the campaign committee treasurer shall attend the examination, or shall appoint such campaign workers to attend who have the same knowledge of the campaign's finances and are authorized to answer questions and help locate records.

contained in the preliminary audit report. In addition, the candidate shall submit any additional documentation requested by the Commission.

- C. If the preliminary audit report cannot be completed, the Commission shall notify the candidate in writing that the audit report will not be completed.

**R2-20-405. Final audit report**

- A. Before voting on whether to approve and issue a final audit report, the Commission will consider any written legal and factual materials timely submitted by the candidate in accordance with A.A.C. R2-20-404. The Commission-approved final audit report may address issues other than those contained in the preliminary audit report.
- B. The final audit report may identify issues that warrant referral for possible enforcement proceedings.
- C. Addenda to the final audit report may be approved and issued by the Commission from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based on follow-up fieldwork conducted, or information ascertained by the Commission in the normal course of carrying out its responsibilities. The procedures set forth in A.A.C. R2-20-404 and subsections A and B of this rule will be followed in preparing such addenda.

**R2-20-406. Release of audit report**

- A. The Commission will consider the final audit report specified in A.A.C. R2-20-405 in an open meeting. The Commission will provide the candidate with copies of the final audit report to be considered in an open meeting 24 hours prior to the public meeting.
- B. Following Commission approval of the final audit report, the report will be forwarded to the candidate within 5 days after the public meeting.

**History Note:**

- All of the rules in Article 4 were amended and proposed by the Commission at a public meeting on November 18, 2003. The sixty-day comment period began on November 19, 2003 and ended on January 20, 2004. At its January 28, 2004 public meeting, the Commission adopted the following changes: Amendments were made to A.A.C. R2-20-702 through R2-20-706 and they were renumbered as R2-20-402 through R2-20-406.
- Some of the rules in Article 4 were amended and proposed by the Commission at a public meeting on January 28, 2004. Sixty-day public comment period began on January 29, 2004 and ended on March 29, 2004. The Commission adopted the amendments during its March 30, 2004 meeting to the following rules: A.A.C. R2-20-403(B).

## **Article 5. Rulemaking**

### **R2-20-501. Purpose and scope**

The article prescribes the procedure for the submission, consideration and disposition of rule making petitions filed with the Commission, establishes the conditions under which the Commission may identify and respond to petitions for rule making, and informs the public of the procedures the agency follows in response to such petitions.

### **R2-20-502. Procedural requirements**

- A. Any interested person may file with the Commission a written petition for the issuance, amendment, or repeal of an administrative rule implementing any of the Citizens Clean Elections Act.
- B. The petition shall:
  - 1. Include the name and address of the petitioner or agent. An authorized agent of the petitioner may submit the petition, but the agent shall disclose the identity of his or her principal;
  - 2. Identify itself as a petition for the issuance, amendment, or repeal of a rule;
  - 3. Identify the specific section of the regulations to be affected;
  - 4. Set forth the factual and legal grounds on which the petitioner relies, in support of the proposed action; and
  - 5. Be addressed and submitted to the Commission.
- C. The petition may include draft regulatory language that would effectuate the petitioner's proposal.
- D. The Commission may, in its discretion, treat a document that fails to conform to the format requirements of subsection B of this rule as a basis for rule making addressing issues raised in a petition.

### **R2-20-503. Processing of petitions**

- A. Within 10 days of receiving a petition, the Commission shall send a letter to the petitioner acknowledging the receipt of the petition and informing the petitioner that the Commission will review and decide whether to deny or accept the petition. To assist in determining whether a rule making proceeding should be initiated, the Commission may publish a Notice of Availability on the Commission web site or otherwise post notice, stating that the petition is available for public inspection in the Commission's Office and that statements in support of or in opposition to the petition may be filed within a stated period after publication of the Notice of Availability.
- B. If the Commission decides a public hearing on the petition would help determine whether to commence a rule making proceeding, it will publish an appropriate notice of the hearing on the Commission web site or otherwise post notice, to notify interested persons and to invite their participation in the hearing.
- C. The Commission will consider all comments regarding whether or not rule making proceedings should be initiated.

### **R2-20-504. Disposition of petitions**

- A. After considering the comments and any other information relevant to the subject matter of the petition, the Commission will decide whether to initiate a rule making based on the filed petition.
- B. If the Commission decides to initiate rule making proceedings, it shall file a Notice of Proposed Rule Making Docket Opening and the proposed rule, in the format prescribed in A.R.S. § 41-1022, with the Secretary of State's office for publication in the Arizona Register. After the Commission approves the proposed rule, the Commission will accept public comments on the proposed rule for 60 days. After consideration of the comments received in the 60-day comment period, the Commission may adopt the rule in open meeting.

- C. If the Commission decides not to initiate rule making, it will give notice of this action by publishing a Notice of Disposition on the Commission web site, or otherwise post notice, and by sending a letter to the petitioner. The Notice of Disposition will include a brief statement of the grounds for the Commission's decision.

**R2-20-505. Commission considerations**

The Commission's decision on the petition for rule making may include, but will not be limited to, the following considerations:

- A. The Commission's statutory authority;
- B. Policy considerations;
- C. The desirability of proceeding on a case-by-case-basis;
- D. The necessity or desirability of statutory revision;
- E. Available agency resources; and
- F. Substantive policy statements.

**R2-20-506. Administrative record**

- A. The Commission record for the petition process consists of the following:
  - 1. The petition, including all attachments on which it relies, filed by the petitioner;
  - 2. Written comments on the petition that have been circulated to and considered by the Commission, including attachments submitted as a part of the comments;
  - 3. Agenda documents, in the form they are circulated to and considered by the Commission in the course of the petition process;
  - 4. All notices published on the Commission web site and in the Arizona Register, including the Notice of Availability and Notice of Disposition;
  - 5. The transcripts or audiotapes of any public hearing on the petition;
  - 6. All correspondence between the Commission and the petitioner, other commentators and state agencies pertaining to Commission consideration of the petition; and
  - 7. The Commission's decision on the petition, including all documents identified or filed by the Commission as part of the record relied on in reaching its final decision.
- B. The administrative record specified in subsection A of this rule is the exclusive record for the Commission's decision.



## **Article 6. Ex Parte Communications**

### **R2-20-601. Purpose and scope**

This Article prescribes procedures for handling ex parte communications made regarding Commission audits, investigations, and litigation. Rules governing such communications made in connection with Commission enforcement actions are found at A.A.C. R2-20-220.

### **R2-20-602. Definitions**

1. “Ex parte communication” means any written or oral communication, by any person outside the agency to any Commissioner or any employee, which imparts information or argument regarding prospective Commission action or potential action concerning:
  - a. Any ongoing audit;
  - b. Any pending investigation; or
  - c. Any litigation matter.
2. “Ex parte communication” does not include the following communications:
  - a. Public statements by any person in a public forum; or
  - b. Statements or inquiries by any person limited to the procedural status of an open proceeding involving a Commission audit, investigation, or litigation matter.

### **R2-20-603. Audits, investigations, and litigation**

- A. In order to avoid the possibility of prejudice, real or apparent, in Commission decision making, no person outside the Commission shall make, or cause to be made, to any Commissioner or employee, any ex parte communication regarding any audit undertaken by the Commission or any pending or prospective Commission decision regarding any investigation or litigation, including whether to initiate, settle, appeal, or make any other decision concerning an investigation or litigation matter.
- B. A Commissioner or employee who receives an oral ex parte communication concerning any matters addressed in subsection A of this rule shall attempt to prevent the communication. If unsuccessful in preventing the communication, the Commissioner or employee shall advise the person making the communication that he or she will not consider the communication and shall, as soon after the communication as is reasonably possible, but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, prepare a statement setting forth the substance and circumstances of the communication, and deliver the statement to the Executive Director for placement in the applicable case file.
- C. A Commissioner or employee who receives a written ex parte communication concerning any matters addressed in subsection A of this rule shall, as soon after the communication as is reasonably possible but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, deliver a copy of the communication to the Executive Director for placement in the applicable case file.

### **R2-20-604. Sanctions**

Any person who becomes aware of a possible violation of this Article shall notify the Executive Director in writing of the facts and circumstances of the alleged violation. The Executive Director shall recommend to the Commission the appropriate action to be taken. The Commission shall determine the appropriate action by at least three votes.

## **Article 7. Use of Funds and Repayment**

### **R2-20-701. Purpose and scope**

A participating candidate may spend clean elections monies only for reasonable and necessary expenses that are directly related to the campaign of that participating candidate.

### **R2-20-702. Use of campaign funds**

- A. A participating candidate shall use funds in the candidate's current campaign account to pay for goods and services for direct campaign purposes only. Funds shall be disbursed and reported in accordance with A.R.S. § 16-948(C).
- B. A participating candidate's payment from a campaign account to a political committee or civic organization is not a contribution if the payment is reasonable in relation to the value received. Payment of customary charges for services rendered, such as for printing voter or telephone lists, and payment of not more than \$150 per person to attend a political event open to the public or to party members shall be considered reasonable in relation to the value received.
- C. A participating candidate shall not use funds in the candidate's campaign account for:
  - 1. Costs of legal defense in any campaign law enforcement proceeding.
  - 2. Food and beverages for staff and volunteers exceeding \$7 for breakfast, \$7.50 for lunch, and \$15 for dinner.
  - 3. Personal use, which includes any item listed below:
    - a. Household food items or supplies.
    - b. Clothing, other than items of de minimis value that are used in the campaign, such as campaign "t-shirts" or caps with campaign slogans.
    - c. Tuition payments, other than those associated with training campaign staff.
    - d. Mortgage, loan, rent, lease or utility payments –
      - 1. For any part of any personal residence of the candidate or a member of the candidate's family; or
      - 2. For real or personal property that is owned or leased by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.
    - e. Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign activity.
    - f. Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises.
    - g. Gifts or donations.
  - 4. Fixed assets with a value in excess of \$600.

#### **R2-20-702.01 Use of Assets**

A participating candidate may use assets such as signs, pamphlets, and office equipment from a prior election cycle only after the candidate's current campaign acquires the assets for an amount equal to the fair market value of the assets. If the candidate was a participating candidate during the prior election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the prior election cycle, the cash payment shall be made to the prior campaign. If the prior campaign account of a nonparticipating candidate is closed, the payment shall be made to the candidate.

### **R2-20-703. Documentation for direct campaign expenditures**

- A. In addition to the general books and records requirements prescribed in A.A.C. R2-20-111, participating candidates shall comply with the following requirements:

1. All participating candidates shall have the burden of proving that expenditures made by the candidate were for direct campaign purposes. The candidate shall obtain and furnish to the Commission on request any evidence regarding direct campaign expenses made by the candidate as provided in subsection 2 of this rule.
  2. All participating candidates shall retain records with respect to each expenditure and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years, and shall present these records to the Commission on request.
  3. All participating candidates shall maintain a list of all fixed assets whose purchase price exceeded \$300 when acquired by the campaign. The list shall include a brief description of each fixed asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition.
- B. Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fund-raising activity is permissible under the Act. To make a request, a candidate shall submit a written description of the planned expenditure or activity to the Commission. The Commission shall inform the candidate whether an enforcement action will be necessary if the candidate carries out the planned expenditure or activity. The Commission shall ensure that the candidate can rely on a “no action” letter. A “no action” letter applies only to the candidate who requested it.
- C. Joint expenditures. Expenditures may be made in conjunction with other candidates, but each candidate shall pay his or her proportionate share of the cost. A candidate’s payment for an advertisement, literature, material, campaign event or other activity shall be considered a joint expenditure including, but not limited to, the following criteria:
1. The activity includes express advocacy of the election or defeat of more than 2 candidates;
  2. The purpose of the material or activity is to promote or facilitate the election of a second candidate;
  3. The use and prominence of a second candidate or his or her name or likeness in the material or activity;
  4. The material or activity includes an expression by a second candidate of his or her view on issues brought up during the election campaign;
  5. The timing of the material or activity in relation to the election of a second candidate;
  6. The distribution of the material or the activity is targeted to a second candidate’s electorate; or
  7. The amount of control a second candidate has over the material or activity.
- D. Any expenditure made by the candidate or the candidate’s committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate’s personal monies.

#### **R2-20-704. Repayment**

- A. In general, the Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund as determined by the Commission.
1. A candidate who has received payments from the Fund shall pay the Fund any amounts that the Commission determines to be repayable. In making repayment determinations, the Commission may utilize information obtained from audits and examinations or otherwise obtained by the Commission in carrying out its responsibilities.
  2. The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than one year after the day of the election.
  3. Once the candidate receives notice of the Commission’s repayment determination, the candidate should give preference to the repayment over all other outstanding obligations of the candidate, except for any taxes owed by the candidate.

4. Repayments may be made only from the following sources: personal funds of the candidate, funds in the candidate's accounts, and any additional funds raised subject to the limitations and prohibitions of the Act.
  5. The Commission may withhold the portion of funds required to be repaid from future payments to a participating candidate if the Commission has made a repayment determination.
- B. The Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund under any of the following circumstances:
1. Payments in excess of candidate's entitlement. If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the Fund an amount equal to such portion.
  2. Use of funds not for direct campaign expenses. If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than direct campaign purposes described in A.A.C. R2-20-702, it will notify the candidate of the amount so used, and such candidate shall pay to the Fund an amount equal to such amount.
  3. Expenditures that were not documented in accordance with campaign finance reporting requirements, expended in violation of State or Federal law, or used to defray expenses resulting from a violation of State or Federal law, such as the payment of fines or penalties.
  4. Surplus. If the Commission determines that a portion of payments from the Fund remains unspent after all direct campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the Fund that portion of surplus funds.
  5. Income on investment or other use of payments from the Fund. If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the Fund, it shall so notify the candidate, and such candidate shall pay to the Fund an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.
  6. Unlawful acceptance of contributions by an eligible candidate. If the Commission determines that a participating candidate accepted contributions, other than early contributions or qualifying contributions, it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the Fund an amount equal to such amount, plus any civil penalties assessed.
- C. Repayment determination procedures. The Commission's repayment determination will be made in accordance with the following procedures:
1. Repayment determination. The Commission will send a repayment determination pursuant to Article 2, Compliance and Enforcement Procedures, and will set forth the legal and factual reasons for such determination, as well as the evidence upon which any such determination is based. The candidate shall repay, in accordance with subsection D of this rule, the amount that the Commission has determined to be repayable.
  2. Administrative review of repayment determination. If a candidate disputes the Commission's repayment determination, he or she may request an administrative appeal of the determination in accordance with A.R.S. § 41-1092 et. seq.
- D. Repayment period.
1. Within 30 days of service of the notice of the Commission's repayment determination, the candidate shall repay the amounts the Commission has determined must be repaid. Upon application by the candidate, the Commission may grant an extension of time in which to make repayment.
  2. If the candidate requests an administrative appeal of the Commission's repayment determination of this section, the time for repayment will be suspended until the Commission has concluded its review of the Administrative Law Judge's (ALJ) decision. Within 30 days after service of the notice of the Commission's review of the

ALJ's decision, the candidate shall repay the amounts that the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 30 days in which to make repayment.

3. Interest shall be assessed on all repayments made after the initial 30-day repayment period or the 30-day repayment period established by this section. The amount of interest due shall be the greater of:
  - a. An amount calculated in accordance with A.R.S. § 44-1201(A); or
  - b. The amount actually earned on the funds set aside or to be repaid under this rule.

**R2-20-705. Additional audits or repayment determinations**

- A. The Commission may conduct an additional audit or examination of any candidate in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.
- B. The Commission may make additional repayment determinations after it has made an initial repayment determination pursuant to A.A.C. R2-20-704. The Commission may make additional repayment determinations where there exist facts not used as the basis for any previous determination. Any such additional repayment determination will be made in accordance with the provisions of this Article.

**R2-20-706. Reserved**

**R2-20-707. Reserved**

**R2-20-708. Reserved**

**R2-20-709. Reserved**

**R2-20-710. Reserved**

**History Note:**

- Some of the rules in Article 7 were amended and proposed by the Commission at a public meeting on November 18, 2003. The sixty-day comment period began on November 19, 2003 and ended on January 20, 2004. At its January 28, 2004 public meeting, the Commission adopted the following changes: Amendments were made to R2-20-702 through R2-20-706 and they were renumbered as R2-20-402 through R2-20-406. New language was adopted for R2-20-701 and R2-20-702. The new R2-20-703 consists of rules amended and moved from R2-20-107(C) & (E-F) and R2-20-710(A-C). Amendments were made to R2-20-707 and it was moved to R2-20-704. Amendments were made to R2-20-708 and it was moved to R2-20-705. R2-20-709 was struck in its entirety. R2-20-710 was amended and moved to R2-20-703(A).
- Some of the rules in Article 7 were amended and proposed by the Commission at a public meeting on January 28, 2004. Sixty-day public comment period began on January 29, 2004 and ended on March 29, 2004. The Commission adopted the amendments during its March 30, 2004 meeting to the following rules: A.A.C. R2-20-702(C); R2-20-703(A); R2-20-704(D).

## Substantive Policy Statements

Substantive policy statements are advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that a substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

Substantive policy statements are advisory only. A substantive policy statement does not include internal procedural documents that affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

The Citizens Clean Elections Commission adopted the following substantive policy statements:

1. A candidate who is interested in participating in the Citizens Clean Elections Act may “test the waters” by collecting qualifying contributions prior to filing an application to be certified as a participating candidate, so long as the candidate has notified the Commission in writing of the intent to collect qualifying contributions for a particular office. After a candidate is certified as a participating candidate, the candidate is eligible to apply for funding. To receive funding, the certified participating candidate must submit the minimum number of valid qualifying contributions required for that office. Should the candidate decide not to seek certification as a participating candidate, the candidate shall either return all qualifying contributions received or receive written permission from the contributors to use their qualifying contributions as campaign contributions. “Written permission” may include a check box on the original \$5 form that authorizes the candidate, to treat the qualifying contribution as a general campaign contribution, if he or she decides not to participate as a publicly-funded candidate. If a good-faith attempt to return the funds to the donor is unsuccessful, the candidate shall submit the contributions to the Clean Elections Fund. (Adopted April 5, 2000. Revised March 30, 2006)
2. A candidate who is interested in participating in the Citizens Clean Elections Act may accept qualifying contributions during a party where the host serves nominal refreshments, so long as making contribution is not a prerequisite to partaking of refreshments. (Adopted April 5, 2000.)
3. The Citizens Clean Elections Commission has the duty and authority to prescribe the qualifying contribution forms for candidates, solicitors and contributors to complete when a contributor make a \$5 qualifying contribution. Pursuant to its authority, the Commission accepts the use of photocopies and computer reproduced qualifying contribution forms that comply with the requirements set forth in the Citizens Clean Elections Act.

To comply with the Citizens Clean Elections Act, a candidate who is interested in participating in the Act shall collect qualifying contributions during the qualifying period. Each qualifying contribution must be accompanied by a three-part reporting slip-the qualifying contribution form-which must include: the printed name, registration address, and

the signature of the contributor, the name of the candidate for whom the contribution is made, the date, and the printed name and signature of the solicitor. A copy of the reporting slip shall be given as a receipt to the contributor.

After collecting the minimum number of qualifying contributions, the candidate must tender to the Secretary of State the original qualifying contribution forms and an amount equal to the sum of the qualifying contributions collected.

In the verification process, the County Recorders will disqualify qualifying contribution forms for any of the following reasons:

- a. The slip is unsigned by the contributor;
- b. The slip is not dated; or
- c. The county recorder is unable to verify as matching a person who is registered to vote, on the date specified on the slip, inside the electoral district of the office the candidate is seeking.

The Secretary of State will approve a candidate for funding if the qualifying contribution forms that are not disqualified are equal to or exceed the minimum number of qualifying contributions required pursuant to the procedure set forth in A.R.S. § 16-950.

The qualifying contribution forms are available at the Commission's office and at other locations. Those interested in obtaining forms should call the Commission or check the web site to find out the exact locations of where the forms are available. The Commission also will mail the forms to all those who request the form by calling 602-364-3477 or toll-free 1-877-631-8891.

Further, a candidate may develop his or her own qualifying contribution form, or one that is photocopied or computer reproduced if the form substantially complies with the form prescribed by the Commission. The candidate must comply with the Citizens Clean Elections Act and ensure that the original qualifying contribution form is tendered to the Secretary of State, a copy remains with the candidate, and that a copy is given to the contributor. In accordance with A.R.S. § 39-103(A), the qualifying contribution form shall conform to standard letter size of eight and one-half inches by eleven inches.

Because a qualifying contribution may be received unsolicited during the qualifying period, the candidate may sign the qualifying contribution form as the solicitor. The candidate may sign the qualifying contribution form as the solicitor and is accountable for all of the responsibilities of a solicitor. (Adopted June 20, 2000; revised adopted September 11, 2001.)

4. Enforcement Policies - Because candidates shall conduct all current campaign financial activities through a single campaign account, a repayment of a candidate loan made in a previous election will not be deemed an expenditure for purposes of the reporting requirement set forth in A.R.S. §16-941(B)(2) if the repayment is made from the previous election account. A repayment of a candidate loan made in a previous election, however, will be deemed an expenditure for purposes of the reporting requirement set forth in A.R.S. §16-941(B)(2) if the repayment is made from the current campaign finance account.

A candidate's transfer of surplus funds from a previous election cycle to an account to be used in the present election will be considered a contribution for purposes of the reporting requirements and for matching funds for the general election.

Early contributions to participating candidates are not calculated in the equalization of funds for participating candidates. (Adopted July 25, 2000; revised adopted September 11, 2001.)

5. Write-In Candidates – Write-in candidates may not qualify for clean campaign funding for the primary election. If a write-in candidate for the primary election becomes the party nominee for the general election and meets all of the other qualifications to become a participating candidate, then the write-in candidate may qualify for clean campaign funding for the general election.

Candidates invited to participate in the debates will be limited to those candidates who will appear on the primary or general election ballots, except for districts in which no candidate will appear on the ballot. (Adopted August 8, 2000.)

6. Credit Card Contributions – The Commission cautions candidates considering accepting qualifying contributions via credit card to consider the practicality of this approach. Acceptance of credit cards requires the payment of fees to credit card processing companies and to Visa, MasterCard and American Express. These expenses may total more than 5% of the cost of each transaction and will include an additional monthly expense for use of the credit card equipment.

The Citizens Clean Elections Act is very specific: qualifying contributions are \$5, exactly. The Act further specifies that the entire qualifying contribution is to be remitted to the Secretary of State at the time the candidate applies for funding from the Commission. In view of this, the costs associated with accepting a qualifying contribution via a credit card transaction must be borne by the campaign and paid for using early contributions or personal monies. For example, if a qualifying contribution is received via credit card, and the fees associated with processing the credit card transaction are 5% of the “sale,” the campaign shall absorb the \$0.25 cost of the transaction. Said another way, when submitting the qualifying contributions to the Secretary of State, a candidate shall remit \$5 times the number of contributor forms presented. Any and all expenses associated with obtaining the qualifying contributions, including credit card processing fees, must be paid for from the candidates’ early contributions or personal monies. (Adopted September 11, 2001.)

7. Collecting Qualifying Contributions Via The Internet – The Commission recognizes that the internet is an invaluable tool for participating candidates to disseminate their message and to solicit qualifying contributions. At the same time, the goals of the Clean Elections Act and the Commissions’ overall obligation to maintain integrity and trust in the qualifying process require that the Commission establish the following policies on the scope and limits of soliciting qualifying contributions via the internet.

A qualifying contribution form that includes the original signature, in ink, of the contribution must accompany each qualifying contribution submitted to the Secretary of State. As a result, obtaining an entirely electronic qualifying contribution is not possible. Candidates may post on their web site a solicitation for qualifying contributions and may post the qualifying contribution form for web site visitors to download or printout. Candidates doing so shall direct contributor to printout a copy of the form, complete it, return the completed form with the \$5 contribution, and keep a copy of the qualifying contribution form for themselves. Upon receipt of a mail contribution that includes a single-part, original qualifying contribution form, the candidate shall photocopy the mailed-in form and retain the copy. The original qualifying contribution form shall be submitted to the Secretary of State along with all other qualifying contribution forms and the sum of the qualifying contributions.

The Commission recognizes that the State has adopted a number of new laws to facilitate electronic transactions. However, the system of voter registration continues to rely upon a comparison of an individual’s known signature on file with their purported signature on a form to verify authenticity. Unless and until the system of voter registration is capable of



accommodating electronic signature, obtaining an entirely electronic qualifying contribution is not possible. (Adopted September 11, 2001.)

8. Independent Expenditures – Only independent expenditures reported or required to be reported pursuant to A.R.S. §16-941(D) will be calculated for equalizing funds in accordance with the formula established by A.R.S. § 16-952. (Adopted September 11, 2001.)
9. Declaration of Emergency – If, during the election year, the Commission determines that there is not enough money to fully fund candidates, and the Commission declares an emergency, then the Commission will permit participating candidates to accept private contributions that are permitted pursuant to Arizona Revised Statutes, title 16, chapter 6, article 1, to bring the total monies to the applicable spending limit. (Adopted September 11, 2001.)
10. Clean Elections Tax Reduction – A taxpayer may make a voluntary tax donation on a state income tax return form filed by and individual or business entity or by directly making a payment to the fund in accordance with A.R.S. §16-954(B). Any taxpayer making such a donation shall receive a dollar-for-dollar tax credit as a charitable contribution on their federal tax return form until the Internal Revenue Services has issued a formal ruling on the matter. (Adopted September 11, 2001.)
11. Reporting Travel Related Expenditures:
  - A. Direct campaign expense. Expenditures for travel relating to the election of a statewide or legislative office candidate shall be considered a direct campaign expense and be reported by the candidate's authorized committee as expenditures, except as provided by A.R.S. §16-901(5)(b)(iv), and below.
    1. Solely campaign trip. For a trip that is entirely campaign-related, the total cost of the trip shall be a direct campaign expense and shall be reported accordingly.
    2. Partial campaign trip. Expenditures allocable for campaign purposes shall be reported and calculated based on the mode of transportation actually used, starting at the point of origin of the trip, via every campaign-related stop and ending at the point of origin. For a trip that includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a direct campaign expense and a reportable expenditure. If a trip is for campaign and non-campaign purposes, no less than fifty percent (50%) of the cost of the trip shall be apportioned to "campaign purposes." Campaign activity includes soliciting, making, or accepting contributions, and expressly advocating the election or defeat of a candidate. Other factors, including the setting, timing and statements or expressions of the purpose of an event, and the substance of the remarks or speech made, will also be considered in determining whether a stop is campaign-related. A brief, incidental contact shall not cause a 'non-campaign' stop to be considered a 'campaign stop.'
    3. Shared campaign trip. Where a candidate conducts any campaign-related activity with other candidates, this shall be considered a joint expenditure pursuant to R2-20-703(c) and each candidate shall pay their proportionate share of the cost.
  - B. Persons traveling with or on behalf of a candidate.
    1. Candidate. Travel expenses of a candidate on campaign-related travel shall be treated as direct reportable campaign expenses.

2. Others. Persons traveling with or on behalf of a candidate may choose to pay their own traveling expenses, which shall not be considered a contribution to the candidate.

C. Transportation costs.

Reporting costs. If a candidate travels by means of a mode of transportation that is owned or leased by the candidate, other private person, or non-commercial entity (“Private Owner”), the candidate’s campaign shall reimburse the Private Owner for the value of the travel of that mode of transportation and report the expenditure or if no reimbursement occurs, the value of the in-kind contribution\* by one of the following methods, at the candidate’s choosing:

1. City served by commercial service. If the travel is to a city served by regularly scheduled commercial service, then the lowest non-discounted fare for that mode of transportation; or  
2. City not served by commercial service. If the travel is to a city not served by regularly scheduled commercial service, then the charter rate comparable to the service provided under existing Arizona state contracts; or

3. Mileage or rental rates. The campaign may use the state mileage reimbursement rate for that mode of transportation, or a current publicly available rental rate. The mileage reimbursement rate for automobiles shall be at least 10¢ per mile and no greater than the current state mileage reimbursement rate (which is 40.5 ¢ per mile in 2006). The mileage reimbursement rate for airplanes shall be at least 91¢ per mile and no greater than the current state mileage reimbursement rate for airplanes (which is 99.5¢ per nautical mile in 2006).

4. Use of State transportation. A candidate who uses state owned transportation for campaign purposes shall pay the state mileage reimbursement rate or daily rental rate to the applicable State agency for travel allocable to the campaign.

D. Circumstances where payment not made to owner. If an owner of transportation, or public accommodations is not reimbursed in whole or part, whether as a result of legal prohibition or otherwise, then the candidate shall either report an in-kind contribution\* or shall remit the value of the transportation or public accommodations to the Clean Elections Fund.

E. Log/Timely Reports.

1. Log. For campaign related trips a candidate shall keep an itinerary of the trip, including name and type of event(s) attended, location, list of all persons accompanying the candidate, and whether the persons were paid or volunteers. The log shall also record which method of cost reporting was used, and if the cost reporting was based upon published rates, a copy of the published rate.

2. Timely reports. The candidate shall report all campaign related travel on a timely basis within the reporting period in which the travel occurred and under no circumstances more than thirty days from the date of travel.

(Adopted April 30, 2002, Revised March 15, 2006 and March 30, 2006.)

12. Reserved.

Allocation of Campaign Expenses Between Campaign and Non-Campaign Related Travel.  
(Adopted April 30, 2002, Revised March 15, 2006, Repealed 4/27/06. Incorporated into Policy #11 March 30, 2006.)

13. Reserved.

Use of Privately-Owned Airplanes; Motor Vehicle; Accommodations.

(Adopted April 30, 2002, Repealed March 30, 2006. Incorporated into Policy #11 March 30, 2006.)

14. Use of the Officeholder Expense Account pursuant to A.A.C. R2-20-104(F) - A candidate who creates an "Officeholder Expense Account" pursuant to Commission Rule R2-20-104(F) in order to fund constituent communications or any permitted activities, must abide by the restrictions contained in the rule. Specifically, no monies raised or used pursuant to this rule may be used for "direct campaign purposes" as set forth at R2-20-101(6). R2-20-104(F)(4) is intended to clarify that monies raised in accordance with this rule will not count towards participating candidate fundraising and spending limits, and will not trigger matching funds or reporting requirements for non-participating candidates. R2-20-104(F)(4) does not permit a candidate to ever use "Officeholder Expense Account" funds for direct campaign purposes. (Adopted January 29, 2002.)

15. Use of Campaign Consultants and Contractors - Participating candidates may hire consultants to provide services to their campaign. The campaign finance report can reflect payments made to the consultant for services provided directly by the consultant. If, however, the consultant pays for goods and services to be provided by a subcontractor or different vendor the campaign finance report shall include the same detail set forth in ARS §16-948(c) for each subcontractor or subvendor. (Adopted December 14, 2005)

Arizona Revised Statutes (A.R.S.) § 41-1001 (20) states:

A “substantive policy statement” means a written expression which informs the general public of an agency’s current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment or a court of competent jurisdiction, including, where appropriate, the agency’s current practice, procedure or method of action based upon that approach or opinion. A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional requirement or penalties on regulated parties, confidential information or rules made in accordance with this chapter.